

PREHEARING and HEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Metcalf Energy Center)	99-AFC-3
(Calpine Corporation and)	
Bechtel Enterprises, Inc.))	
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SAN JOSE CONVENTION AND CULTURAL FACILITIES

MEETING ROOM K - LOWER LEVEL

408 ALMADEN BOULEVARD

SAN JOSE, CALIFORNIA

TUESDAY, JANUARY 9, 2001

2:10 p.m.

Reported by:
James Ramos
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

William Keese, Chairman, Associate Member

Stanley Valkosky, Hearing Officer

STAFF PRESENT

Dick Ratliff

Kerry Willis

Steve Munro

Paul Richins

Dorothy Torres

Gary Reinobhl

PUBLIC ADVISOR

Roberta Mendonca

APPLICANT

Jeffery D. Harris, Attorney,
Ellison & Schneider
Calpine Corporation/Bechtel Enterprises

Kenneth E. Abreu, Development Manager
Metcalf Energy Center

John L. Carrier, Senior Project Manager
CH2MHILL

Colin I. Busby, Principal
Basin Research Associates

INTERVENORS

Roger Beers, Attorney
Coyote Valley Research Park

INTERVENORS

Scott Scholz
South San Jose.com

Elizabeth Cord, President
Santa Teresa Citizen Action Group

Robert F. Williams, President
Williams Technical Associates, Inc.
ST Action

Michael E. Boyd, Commissioner
City of Sunnyvale
CARE

Issa Ajlouny

Jeff Wade

Mollie Dent
City of San Jose

William J. Garbett
Public

John Wiktorowicz
Santa Teresa Swim and Racquet Club

ALSO PRESENT

Suzanna Wong

Oliver Kraemer

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 P R O C E E D I N G S

2 2:10 p.m.

3 HEARING OFFICER VALKOSKY: Good
4 afternoon. This is the second day of the first
5 set of evidentiary hearings on the Metcalf Energy
6 Center.

7 The items on today's agenda, the sole
8 substantive item, I should say, is cultural
9 resources. We'll do that topic as indicated on
10 the December 5th notice, and after that we'll
11 continue the prehearing conference, continue the
12 discussions we last had November 30th of last
13 year.

14 Looking around, I see the parties, for
15 the most part, are similar from yesterday with the
16 exception of Mr. Beers. Would you introduce
17 yourself, sir? Oh, I'm sorry, my mistake, CVRP is
18 not here yet.

19 Okay, with that, Mr. Harris, cultural
20 resources.

21 MR. HARRIS: Yes. I'd like to have our
22 witness come forward. Do you want him over here,
23 as well, in the same location?

24 HEARING OFFICER VALKOSKY: Yes, that
25 would be preferable.

1 MR. HARRIS: Mr. Busby, please. I'd ask
2 that the witness be sworn, please.

3 Whereupon,

4 COLIN I. BUSBY

5 was called as a witness herein, and after first
6 having been duly sworn, was examined and testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. HARRIS:

10 Q Mr. Busby, would you let us know which
11 subject matter testimony are you here to sponsor
12 today?

13 A I'm here to speak on the cultural
14 resources.

15 Q Specifically which documents are you
16 sponsoring as part of your testimony?

17 A Section 8.3 of the AFC, appendix 8.3 of
18 the AFC, supplements A and C to the AFC, responses
19 to CEC data requests numbers 35, 36, 37, 38, 39,
20 162, 163, 164, 165, 166, 167, 168, 169, 170, 171,
21 172, 173, 174, 3-218, 3-219, 3-220, 3-221, 3-222
22 and 3-223, along with all supplemental filings of
23 these data requests and comments filed on the PSA
24 regarding cultural resources.

25 MR. HARRIS: Okay, we actually have a

1 cheat-sheet this morning on these documents since
2 they were filed in several different sets. I'll
3 make that available to the Hearing Officer. But
4 let me go through them.

5 Section 8.3 of the AFC is exhibit 1;
6 appendix 8.3, again exhibit 1; supplements A and C
7 are exhibits 3 and 5 respectively.

8 The data responses are a little more
9 complex, and that's why I've provided this sheet.
10 Data responses 36 and 37 are part of our data
11 response set 1A. That's already previously been
12 marked as exhibit 13.

13 Data requests 35, 38, 39 are part of our
14 set 1D responses, and that is a new exhibit. So
15 I'd ask that a number be assigned to that.

16 HEARING OFFICER VALKOSKY: Number 26.

17 MR. HARRIS: 26. Data responses 162,
18 163, 164, 165 should be in there as well, 166,
19 167, 168, 169, 171, 173 and 174 are a part of our
20 set 2A comments, and that is also a new exhibit.

21 HEARING OFFICER VALKOSKY: We'll
22 designate that exhibit 27.

23 MR. HARRIS: Okay. 165 should not have
24 been in that list, I'm sorry.

25 And data request 165, 170 and 172 are

1 set B responses, that's currently exhibit 14.
2 Data response 173, supplemental set 2F, which is a
3 new exhibit, and I'd ask that that be given a
4 number.

5 HEARING OFFICER VALKOSKY: Mark it as
6 28.

7 MR. HARRIS: That one, also, I'll be
8 wanting to move into evidence at the appropriate
9 time, because this is the only witness on that
10 one.

11 Data request 3-218, 3-219, 3-220, 3-221,
12 3-222 and 3-223 are part of a set 3B. This is
13 also a new exhibit.

14 HEARING OFFICER VALKOSKY: It will be
15 next in numbered order which is 29.

16 MR. HARRIS: And then the comments on
17 the PSA regarding cultural is our set 2, which is
18 already marked as exhibit 24. And also our set 9,
19 which is a new exhibit.

20 HEARING OFFICER VALKOSKY: That will be
21 designed as exhibit 30.

22 MR. HARRIS: Thank you for your patience
23 on that.

24 Returning now to Mr. Busby.

25 //

1 BY MR. HARRIS:

2 Q Do you have any changes, corrections or
3 clarifications for your testimony?

4 A Yes, I do.

5 Q Specifically I believe you reviewed
6 staff's proposed changes to cultural 2?

7 A Yes, I did. And I concur with the
8 changes in it.

9 Q So you find those changes acceptable?

10 A Yes, they're very acceptable.

11 Q Okay. Also, as I understand, you have a
12 clarification on your previous comments on
13 cultural 16. Could you elaborate upon that
14 comment?

15 A Yes. We continue to believe that
16 monitoring by Native Americans, as noted in CUL-
17 16, is only called for if there's a moderate to
18 high potential for the exposure of Native American
19 human remains.

20 And in our particular case we performed
21 subsurface presence/absence testing at the site,
22 and we have determined that the potential for the
23 exposure of Native American human remains is
24 extremely low. And therefore we don't believe
25 monitoring should occur.

1 We do, however, concur, since we did not
2 do presence/absence testing along the gas
3 pipeline, that monitoring with the Native American
4 is acceptable for that particular part of the
5 project.

6 Q So the bottomline there is that the
7 Native American monitors appear justified for the
8 gasline portion of the project, is that correct?

9 A Yes. We'll agree to that.

10 Q Okay. Thank you. Continuing on now,
11 were your documents prepared either by you or at
12 your direction?

13 A Yes, they were.

14 Q And are the statements of facts therein
15 true to the best of your knowledge?

16 A Yes, they are.

17 Q Are the opinions stated therein your
18 own?

19 A Yes.

20 Q And do you adopt this as your testimony
21 for this proceeding?

22 A I do.

23 Q Will you briefly review your
24 qualifications for the Committee, please?

25 A Yes. BA, MA, PhD, UC Berkeley in

1 anthropology; 25 years as a practitioner and
2 academic in archeology, anthropology of the
3 American West. And for the past 20 years I've
4 been involved in cultural resource management.

5 Q And what's your current position?

6 A Current position, I am a principal in
7 charge of Basin Research Associates, which has
8 been in business since 1980.

9 Q Now will you please provide a short
10 summary of your testimony for us.

11 A Basin Research was retained by CH2 to
12 conduct presence/absence testing at the MEC site.
13 CH2's archeologist, during the systematic survey
14 of the property, had noted three pieces of
15 Franciscan chur flakes that may have been placed
16 there, the remnants of Native American cultural
17 devitage, and based on that they wanted to
18 determine if there were any significant subsurface
19 archeological resources present on the property.

20 To that end we developed a systematic
21 backhoe testing program to excavate and determine
22 if any additional cultural resources were below
23 the surface. We did not find any.

24 Q I was about to ask you, what were the
25 findings?

1 A The results were we did not find any, we
2 did not find any prehistoric subsurface resources;
3 we did not find any historic subsurface resources.
4 It was culturally sterile.

5 Q Thank you. And with regard to the
6 applicable laws, ordinances, regulations and
7 standards, did you have a chance to review those
8 applicable LORS?

9 A Yes, I do, and the project complies with
10 all the applicable LORS for cultural resources.

11 Q Thank you. Now, you've had a chance to
12 review the final staff assessment?

13 A Yes, I have.

14 Q And you've had a chance to review the
15 conditions of certification?

16 A Yes, I have.

17 Q With the changes to cultural-2 that you
18 noted at the beginning, and the clarifications on
19 cultural 16, with those two caveats, are those
20 conditions acceptable to you?

21 A Yes.

22 MR. HARRIS: At this time I'd like to
23 move into evidence the exhibit marked 28, as this
24 witness will be the only one using that particular
25 document.

1 HEARING OFFICER VALKOSKY: Okay. I
2 assume you would also want 6B, which is a
3 substitution --

4 MR. HARRIS: Yes.

5 HEARING OFFICER VALKOSKY: -- Dr. Busby?

6 MR. HARRIS: Yes.

7 HEARING OFFICER VALKOSKY: Is there
8 objection to admitting exhibits 28 and 6B?

9 MS. WILLIS: No objection.

10 HEARING OFFICER VALKOSKY: See no
11 objection, they're admitted.

12 MR. HARRIS: I'd make the witness
13 available for cross-examination.

14 EXAMINATION

15 BY HEARING OFFICER VALKOSKY:

16 Q Before we turn it over to staff, Dr.
17 Busby, did I hear you indicate you accepted the
18 staff conditions?

19 A Yes.

20 Q Now, I thought I had heard you say in
21 the beginning of your testimony that you took
22 exception to cultural-16 because it would require
23 the presence of a Native American monitor for site
24 construction, is that not correct, or am I
25 confused?

1 A Yes. We're attempting to clarify that a
2 Native American monitor does not appear to be
3 necessary at this particular site because the
4 presence/absence testing has shown an extremely
5 low potential for exposing any Native American
6 skeletal remains.

7 And we also should point out that
8 there's no legal requirement for the presence of a
9 Native American monitor, as well.

10 Q Okay, so then I guess it's your
11 interpretation that condition Cultural-16 does not
12 require a Native American monitor --

13 A We would like for -- excuse me, go
14 ahead.

15 Q -- for the project site, then?

16 A Yes.

17 HEARING OFFICER VALKOSKY: Okay, I'd
18 like staff to please clarify that point with your
19 witness.

20 Okay, cross-examination, Ms. Willis?

21 MS. WILLIS: No questions.

22 HEARING OFFICER VALKOSKY: Mr. Boyd is
23 not here. Does anyone have any questions on Mr.
24 Boyd's behalf? Mr. Williams, you were the other
25 party who indicated the desire to cross-examine?

1 MR. WILLIAMS: Yes, I have only one
2 question.

3 CROSS-EXAMINATION

4 BY MR. WILLIAMS:

5 Q Could you please explain why you object
6 to having a Native American monitor?

7 A At this particular location the
8 presence/absence testing that was conducted as
9 part of our due diligence, determined that there
10 is an extremely low probability of exposing any
11 Native American skeletal remains.

12 And there is no legal requirement for a
13 Native American to monitor this particular project
14 since there is no potential.

15 Q Well, the reason for my question, it
16 seems like you might do it as a gesture of good
17 will to the community.

18 HEARING OFFICER VALKOSKY: Ask a
19 question, Mr. Williams.

20 BY MR. WILLIAMS:

21 Q Would you consider a Native American
22 monitor as a gesture of good will to the
23 community?

24 MR. HARRIS: I guess I'd object to the
25 good will portion of that question.

1 BY MR. WILLIAMS:

2 Q As a gesture to the community?

3 (Laughter.)

4 MR. HARRIS: The gesture part, too,
5 bothers me. No gesture --

6 MR. WILLIAMS: I withdraw the question.
7 Thank you.

8 HEARING OFFICER VALKOSKY: Okay, thank
9 you, Mr. Williams. Mr. Scholz? Ms. Cord?

10 MS. CORD: No questions.

11 HEARING OFFICER VALKOSKY: Any redirect?

12 MR. HARRIS: No.

13 HEARING OFFICER VALKOSKY: Anything else
14 for this witness? Thank you, sir.

15 DR. BUSBY: Thank you very much.

16 HEARING OFFICER VALKOSKY: Staff.

17 MS. WILLIS: Staff calls Dorothy Torres
18 and Gary Reinobhl.

19 Whereupon,

20 DOROTHY TORRES and GARY REINOBHL
21 were called as witnesses herein, and after first
22 having been duly sworn, were examined and
23 testified as follows:

24 //

25 //

1 DIRECT EXAMINATION

2 BY MS. WILLIS:

3 Q Ms. Torres, could you please state your
4 name for the record.

5 A I'm Dorothy Torres.

6 Q Was a statement of your qualifications
7 attached to this testimony?

8 A Yes, it was.

9 Q Could you please tell us what your job
10 title is?

11 A I'm staff person assigned to cultural
12 resources in the community, and cultural resources
13 unit.

14 Q And could you briefly state your
15 education and experience as it pertains to
16 cultural resources?

17 A I have a BA in anthropology and history;
18 and a master degree in anthropology. I've worked
19 on 24 siting cases in the two years that I've been
20 with the Commission.

21 I'm also available to work on any
22 compliance projects regarding cultural resources.

23 Q And did you prepare or assist in
24 preparing the testimony entitled cultural
25 resources in the final staff assessment?

1 A Yes, I did.

2 Q Do you have any changes or corrections
3 to your testimony?

4 A Not at this time. No.

5 Q Did you not submit a change to cultural-
6 2?

7 A Oh, yes, I did.

8 Q And that change has been handed out to
9 all the parties, I believe, at this point in time?

10 A Yes, it has.

11 Q Why was that condition changed?

12 A We wrote a better condition with better
13 language that makes it easier for us to process at
14 the Commission, and easy for the applicant to
15 comply with.

16 Q Does the change in that cultural-2
17 condition change your conclusions in your
18 analysis?

19 A No, it doesn't.

20 BY MS. WILLIS:

21 Q Mr. Reinobhl, could you please state
22 your name for the record?

23 A My name is Gary Reinobhl.

24 Q Was a statement of your qualifications
25 attached to the testimony?

1 A Yes, it was.

2 Q And what is your job title?

3 A I do cultural resources review in the
4 cultural resource and community unit.

5 Q And could you briefly state your
6 education and experience as it pertains to
7 cultural resources?

8 A Yes, I have a masters degree in cultural
9 resource management. I've worked over 25 years in
10 the field, 20 of those years in the State of
11 California.

12 I've worked for the Energy Commission
13 for a little over six months, and I've worked on
14 nine separate cases in that time. And I've worked
15 on compliance for several cases.

16 Q And did you assist in preparing the
17 testimony entitled cultural resources in the final
18 staff assessment?

19 A Yes, I did.

20 Q Did the opinions contained in that
21 testimony represent your best professional
22 judgment?

23 A Yes.

24 BY MS. WILLIS:

25 Q And, Ms. Torres, are the opinions

1 contained in the cultural resources section
2 represent your best professional judgment?

3 MS. TORRES: Yes, it does.

4 MS. WILLIS: Ms. Torres, could you
5 please tell us what the final staff assessment
6 seeks to accomplish in the area of cultural
7 resources?

8 MS. TORRES: In the area of cultural
9 resources staff provides an independent analysis
10 which identifies existing and potential cultural
11 resources that may be impacted by the project.

12 Staff then recommends mitigation and
13 procedures that will protect those resources.
14 Staff also insures compliance with federal, state
15 and local laws, standards and regulations through
16 the conditions of certification.

17 MS. WILLIS: Thank you. There were
18 several concerns raised by the public. One
19 concern in regards to previously recorded sites
20 249 and 250. Mr. Reinobhl, could you please tell
21 us where these sites were recorded?

22 MR. REINOBHL: These sites were recorded
23 along the route of the proposed South Bay water
24 recycling route.

25 MS. WILLIS: And when were they

1 recorded?

2 MR. REINOBHL: They were originally
3 recorded in 1977.

4 MS. WILLIS: And were these sites
5 relocated recently?

6 MR. REINOBHL: No, they were not.
7 Development in the area has obscured any surface
8 evidence of these sites.

9 MS. WILLIS: And what type of
10 development was that?

11 MR. REINOBHL: Residential development.

12 MS. WILLIS: Ms. Torres, another area of
13 concern is monitoring. Are there any conditions
14 of certification that insure monitoring of
15 cultural resources during the construction of the
16 proposed project?

17 MS. TORRES: Yes, several conditions
18 insure monitoring. Condition number one requires
19 the applicant obtain the services of a cultural
20 resources specialist. And the qualifications that
21 we require of that person are extensive.

22 The cultural resources, a specialist is
23 then approved by the compliance project manager on
24 the advice of the cultural resources technical
25 staff.

1 Condition number three requires that
2 that cultural resources person develop a
3 monitoring and mitigation plan which tells us how
4 they will comply with the conditions of
5 certification. And a portion of that plan
6 indicates where monitoring shall be conducted full
7 time.

8 MS. WILLIS: Thank you. Is staff
9 recommending a Native American monitor included as
10 part of the cultural resources team?

11 MS. TORRES: Yes, staff is recommending
12 that a Native American monitor be present as part
13 of the cultural resources team, and be a member of
14 the team and present whenever cultural resources
15 monitoring is being conducted.

16 Staff is recommending that because
17 within one mile of the project site there have
18 been 44 recorded cultural resources sites. There
19 have been two sites within one-half mile of the
20 project where human burials have been unearthed.
21 And there's a third site approximately one mile
22 from the project where human burials are
23 anticipated.

24 Staff chooses to be cautious and to have
25 a Native American monitor on site so there's never

1 any question if human remains are unearthed or
2 artifacts are uncovered, whether or not those
3 artifacts remains are treated with the appropriate
4 respect and dignity.

5 MS. WILLIS: Were you involved in any
6 outreach activities involving Native Americans in
7 this project?

8 MS. TORRES: Yes, I was.

9 MS. WILLIS: And could you please
10 describe those activities?

11 MS. TORRES: Staff sent letters to 12
12 Native American individuals or groups who are
13 identified by the Native American Heritage
14 Commission. The Native American Heritage
15 Commission prepares a list of concerned
16 individuals who wish to be notified regarding
17 construction disturbances in their area.

18 The letters included information on the
19 project, and described a meeting that would be
20 held on February 15th.

21 After sending the letters staff then
22 telephoned all 12 people on the list. Five Native
23 Americans attended the February 15th meeting, and
24 they expressed concerns regarding disturbance in
25 the area and the possibility of encountering human

1 burials. However, no Native American has
2 identified the presence of a sacred site.

3 MS. WILLIS: You just heard testimony
4 from the applicant's witness regarding cultural
5 condition 16.

6 MS. TORRES: Yes.

7 MS. WILLIS: Are you in agreement with
8 their assessment of that condition?

9 MS. TORRES: No, I'm not.

10 MS. WILLIS: And could you please
11 describe why?

12 MS. TORRES: Staff includes this
13 condition on projects where there's a great deal
14 of Native American concern, and where there's a
15 high potential for encountering human burials.

16 I think burials within one-half a mile,
17 in staff's opinion, we prefer to be cautious and
18 have the Native American on site rather than
19 waiting and having them called after something's
20 unearthed.

21 MS. WILLIS: Mr. Reinobhl, intervenor
22 CARE indicated in its prehearing brief that the
23 project needs a full scope cultural resources
24 management assessment, CRN. Do you agree?

25 MR. REINOBHL: In my opinion, my

1 professional opinion, a cultural resources
2 management assessment has been made.

3 MS. WILLIS: Thank you. I have no
4 further questions.

5 HEARING OFFICER VALKOSKY: Okay, before
6 I turn it over to cross.

7 EXAMINATION

8 BY HEARING OFFICER VALKOSKY:

9 Q Ms. Torres, could you just educate the
10 Committee a little bit about the role of a
11 monitor, the Native American monitor, and what
12 that person does all day? I mean, if they're at
13 the plant all day, who pays for them? Or if
14 they're just on call in case a resource is
15 discovered?

16 MS. TORRES: A Native American monitor
17 would represent more or less religious aspects and
18 concerns of the Native American people, rather
19 than looking at the physical sort of things that
20 the archeologist would be concerned about.

21 For example, if burials are unearthed, a
22 construction crew might pick up the bones and joke
23 or laugh, and that would be very inappropriate
24 behavior in terms of how Native Americans view
25 their burial sites.

1 HEARING OFFICER VALKOSKY: So is the
2 monitor typically present on the site all the
3 time, or --

4 MS. TORRES: Yes.

5 HEARING OFFICER VALKOSKY: Okay.

6 MS. TORRES: Presumably the monitor
7 would be there to educate people concerning the
8 correct behavior regarding things like burials.

9 HEARING OFFICER VALKOSKY: Okay, and
10 this would be something that would be paid for by
11 the applicant?

12 MS. TORRES: Yes.

13 HEARING OFFICER VALKOSKY: Do you agree
14 with Dr. Busby's statement that there is no
15 specific legal requirement for a monitor at
16 present?

17 MS. TORRES: There's no law that
18 requires Native American monitoring. However,
19 many cultural resources managers would agree that
20 having -- involving Native Americans in
21 archeological projects is an essential way to
22 identify the resources.

23 HEARING OFFICER VALKOSKY: Okay, so the
24 decision -- now I take it the monitors are
25 compensated, or are they?

1 MS. TORRES: Usually, but not always.

2 HEARING OFFICER VALKOSKY: Okay.

3 MS. TORRES: Sometimes consultation is
4 done with no compensation.

5 HEARING OFFICER VALKOSKY: I see.

6 PRESIDING MEMBER LAURIE: Does it ever
7 occur that a developer may have somebody on staff
8 that's a Native American that would qualify for
9 such a position, so they're actually working
10 during the course of the day while they are
11 secondarily -- if a project takes a year and a
12 half to two years to build, and you have a person
13 designated to sit there all day, and they're
14 getting paid, does it ever occur that the
15 developer is free to determine if they have a
16 Native American on staff, and that person can act
17 in a secondary role of monitoring?

18 MR. REINOBHL: Maybe one point of
19 clarification. The Native American monitor is
20 only required to be there when cultural resources
21 monitoring is occurring.

22 PRESIDING MEMBER LAURIE: I see, okay.

23 So it's not a two-year gig?

24 MR. REINOBHL: Not necessarily, no.

25 PRESIDING MEMBER LAURIE: Okay.

1 MR. REINOBHL: Only when there's a need
2 for cultural resource monitoring.

3 PRESIDING MEMBER LAURIE: And explain to
4 me at what stage that occurs, the cultural
5 resource monitoring.

6 MR. REINOBHL: That monitoring, the
7 areas that would need to be monitored would be
8 identified in the cultural resource monitoring and
9 mitigation plan. And that's usually during the
10 period that actual construction is taking place
11 where ground disturbance is occurring.

12 PRESIDING MEMBER LAURIE: And so can you
13 forecast in advance when you're going to call a
14 representative in, and so the person can be sort
15 of on call during a period of days, or weeks, off
16 and on for a period of the construction period?

17 MR. REINOBHL: Just like the cultural
18 resources monitoring being on call, the Native
19 American monitor can be on call because they would
20 be a portion of that team.

21 PRESIDING MEMBER LAURIE: I see. Okay.
22 So my first impression of a person sitting in an
23 office for the sole purpose of responding should
24 there be an event over a year and a half period,
25 that understanding is incorrect?

1 MR. REINOBHL: I believe they would
2 probably not need to be there for the entire year
3 and a half or two-year construction period.
4 During ground disturbance --

5 PRESIDING MEMBER LAURIE: Okay, I
6 understand.

7 MR. REINOBHL: -- that would be
8 required. And secondly, another point of
9 clarification. The Native American Heritage
10 Commission has guidelines for Native American
11 monitors.

12 So if they had someone on staff that met
13 those guidelines, we would not object to that
14 person --

15 PRESIDING MEMBER LAURIE: Guidelines to
16 meet the criteria of being a monitor?

17 MR. REINOBHL: Right.

18 PRESIDING MEMBER LAURIE: Okay, very
19 helpful, thank you, sir.

20 CHAIRMAN KEESE: May I continue on this.
21 The cultural monitoring team, would they be there
22 just as often as the Native American monitor? I
23 mean are we talking about the same parameters
24 here?

25 MR. REINOBHL: The Native American

1 monitor would be a member of the cultural
2 resources team.

3 CHAIRMAN KEESE: How many people does
4 that compose?

5 MR. REINOBHL: It might vary. It
6 depends on how many locations monitoring is needed
7 at any one time. There may be --

8 CHAIRMAN KEESE: Okay, let me then ask,
9 I heard Dr. Busby say that the site was culturally
10 sterile. Would you agree with that?

11 MR. REINOBHL: The testing that was done
12 on the plant site was sufficient to identify large
13 occupation sites. And I believe in our FSA we do
14 not require monitoring in that area.

15 MS. TORRES: We do not require cultural
16 resources monitoring in the area where the
17 trenching was done. Cultural resources monitoring
18 will occur on the project on the SBWR water route,
19 and in the vicinity of the gasline. And if they
20 go south of Blanchard Road.

21 CHAIRMAN KEESE: Okay. It sounds to me
22 like we've reduced the timeframe here quite
23 significantly. You're saying not on the site
24 where the plant's being built?

25 MS. TORRES: Right.

1 CHAIRMAN KEESE: But only when they're
2 doing trenching for the one mile trenching for the
3 gasline?

4 MS. TORRES: Yes.

5 MR. REINOBHL: And the water line.

6 MS. TORRES: And the water line --

7 CHAIRMAN KEESE: And ten miles on the
8 water line.

9 MS. TORRES: And if they go south of
10 Blanchard Road on the water lines.

11 CHAIRMAN KEESE: Okay, and you're
12 indicating that -- did I get the indication when
13 the question was asked about compensation, that if
14 the applicant were to make available to the Native
15 American community the times when they would be
16 doing this activity, and say that any, you know,
17 appropriate Native American monitor was welcome to
18 be there, that that would suffice?

19 Or are you, as part of the condition,
20 which I unfortunately don't have in front of me,
21 are you saying that it's up to the applicant to
22 retain and hire someone who will be on call
23 whenever they're going to take an action that is
24 disturbing the ground on those two routes?

25 MS. TORRES: We require a monitoring

1 agreement. We don't require monetary
2 compensation. We require evidence of an
3 agreement.

4 CHAIRMAN KEESE: So they would have to
5 get an agreement?

6 MS. TORRES: We do, however, require
7 that it be a Native American with ties to that
8 particular area.

9 CHAIRMAN KEESE: Okay. So you're
10 willing to accept the culturally sterile on the
11 site, but you're saying on the other two lines I
12 believe your words were there's a high probability
13 of disturbance? High probability was your term.

14 MS. TORRES: I'm not -- oh, it was,
15 okay.

16 CHAIRMAN KEESE: Is that how you --

17 MS. TORRES: Well, the indication --
18 would you like to -- you looked like you started
19 to say something -- I'm sorry --

20 MR. REINOBHL: There are a number of
21 sites around the project area. They were
22 identified in the background search that was done.
23 There are burials in some of those sites and have
24 been recovered from some of those sites.

25 Some of the areas where there will be

1 trenching, and there was not an ability to see the
2 ground, and so even though a survey was
3 accomplished, the ability to identify existing
4 resources was limited. And consequently, yes,
5 we're requiring monitoring and a Native American
6 monitor in those cases.

7 CHAIRMAN KEESE: Okay. Let me then ask,
8 I mean if there was a moderate probability would
9 you suggest a monitor; if there was a low
10 probability would there be a monitor? Or do we
11 have to reach a place where it's a high
12 probability before you recommend a monitor?

13 MR. REINOBHL: We recommend a monitor
14 when there's an indication that there are sites in
15 an area and that resources could be discovered,
16 and that there are burials associated with sites
17 that are close to the project area.

18 CHAIRMAN KEESE: So we should forget the
19 high probability? Is that what you're --

20 MR. REINOBHL: Yes.

21 CHAIRMAN KEESE: Okay, thank you.

22 PRESIDING MEMBER LAURIE: One more
23 question. With respect to the sensitivities of
24 recognizing the religious aspects of coming upon
25 the remains of anybody, that is a religious issue,

1 and it should be accorded due respect.

2 In both your experiences is there any
3 other mechanism for achieving the same outcome
4 that you desire? Is there any alternative to
5 having a monitor present? For example, education
6 of the foremen, of the people responsible?
7 Presentation or education of management?
8 Literature?

9 In your experiences have you found that
10 to be helpful and beneficial, or have you found
11 that to be inadequate for the purpose of
12 accomplishing preservation of the religious
13 concerns that you mentioned?

14 MS. TORRES: It would be certainly
15 helpful. And we would like to see Native
16 Americans participating in education. But I think
17 there is so much distrust between Native Americans
18 and contractors and archaeologists that that
19 wouldn't be sufficient.

20 MR. REINOBHL: I think what Dorothy said
21 is true.

22 CHAIRMAN KEESE: Let me ask, I didn't
23 understand, I guess. From home construction is
24 where these other sites have been located within
25 the vicinity? Is that what the indication was,

1 previous activity in the construction of homes was
2 identified?

3 MR. REINOBHL: There were two sites that
4 were questioned during workshops that are in an
5 area where there has been residential development.
6 Those are not the only sites.

7 CHAIRMAN KEESE: Would this be a typical
8 provision if this area was being developed for
9 home sites, would the developer have a monitor on
10 standby when they were doing any construction on
11 those sites?

12 MR. REINOBHL: It would be wise.

13 CHAIRMAN KEESE: But you're not aware of
14 whether it's typical or not?

15 MR. REINOBHL: I've not dealt with
16 residential developments, so I couldn't answer
17 whether it's typical.

18 CHAIRMAN KEESE: Thank you.

19 HEARING OFFICER VALKOSKY: I just have a
20 couple more points of clarification, and this is
21 to the staff panel, whoever is appropriate to
22 answer, please feel free.

23 In CARE's filings Mr. Boyd indicates,
24 has belief that there's a need for a cultural
25 resource management assessment. Are you familiar

1 with that?

2 MR. REINOBHL: Yes, I am.

3 HEARING OFFICER VALKOSKY: Do you agree
4 that such an assessment is needed? Or, if not,
5 why not?

6 MR. REINOBHL: In my professional
7 opinion we have already, or the applicant has
8 already completed a cultural resource management
9 assessment.

10 HEARING OFFICER VALKOSKY: Okay, so that
11 any further study would just be duplicative, is
12 that correct?

13 MR. REINOBHL: That's correct.

14 HEARING OFFICER VALKOSKY: Okay, thank
15 you. Mr. Boyd also indicates his belief in the
16 need for additional consultation with federal
17 agencies on cultural resources. Are you familiar
18 with that assertion?

19 MR. REINOBHL: I have read the
20 testimony, yes.

21 HEARING OFFICER VALKOSKY: Okay. Do you
22 agree or disagree with Mr. Boyd's assertion?

23 MR. REINOBHL: The only federal
24 involvement will be the requirement for a Corps of
25 Engineers permit. And the applicant has to apply

1 to the Corps of Engineers for that permit. The
2 Energy Commission has no involvement in that
3 application other than the condition that requires
4 that they report to us on what that permit is, and
5 that they've met any mitigation measures for
6 cultural resources in connection with that permit.

7 HEARING OFFICER VALKOSKY: So in your
8 opinion that's not something that would have to be
9 done before the Commission would consider
10 certifying the plant, is that correct?

11 MR. REINOBHL: That's correct.

12 HEARING OFFICER VALKOSKY: Thank you.
13 Cross-examination, Mr. Harris?

14 MR. HARRIS: Yes, please. I want to
15 proceed very carefully here, because this is an
16 important subject matter, and one that deserves
17 great respect. So I'll try to proceed in that
18 manner.

19 CROSS-EXAMINATION

20 BY MR. HARRIS:

21 Q I understand, I guess my original
22 understanding was that the monitor needed to be
23 there virtually, I want to say 24/7, but you don't
24 construct 24/7, but virtually all the time that
25 there's activity on the site.

1 And it sounds like that's not the case.

2 And so I looked at the condition again. I think
3 the language at the very end is what I'd like some
4 clarification on. The very end of cultural-16.

5 And it said, basically the last line
6 where it says, or the last sentence: A monitor
7 shall be considered a member of the cultural
8 resources team, and shall be present during
9 preconstruction and construction phases of the
10 project."

11 And this is the key phrase where I think
12 I'd like some clarification: Whenever cultural
13 resource monitoring activities are conducted."

14 It sounds like that's not all the time,
15 but I'm not sure how much of the time that is. So
16 could you give us some clarification on that?

17 MS. TORRES: Our intent with the
18 condition was that the Native American monitor be
19 present when cultural resources monitoring
20 activities are going on.

21 So, if you have your cultural resources
22 specialist, or if you have a monitor selected by
23 the cultural resources specialist, the Native
24 American would also be present.

25 MR. HARRIS: Can you explain to us the

1 difference between a monitor and the most likely
2 descendent?

3 MS. TORRES: The most likely descendent,
4 if you did discover bones you would contact the
5 Native American Heritage Commission after going
6 through the other necessary law things you'd need
7 to do, and they would give you the name of the
8 most likely descendent. And then they would
9 decide, in conjunction with the landowner, what
10 needed to happen with the bones.

11 MR. HARRIS: Okay, so that --

12 MS. TORRES: The monitor --

13 MR. HARRIS: I'm sorry, that was the
14 most likely descendent.

15 MS. TORRES: Yes, that was the most
16 likely descendent.

17 The monitor would be someone retained
18 from that tribal group, but not necessarily the
19 most likely descendent.

20 MR. HARRIS: Okay, so those are very
21 different roles, then, it sounds like. The
22 monitor is --

23 MS. TORRES: My understanding is that
24 they're different roles, yes.

25 MR. HARRIS: Okay. Can you help me a

1 little bit in understanding that? The monitor
2 detects the resource and the most likely
3 descendent, what is their responsibility?

4 MS. TORRES: The most likely descendent
5 would determine how the bones would be disposed
6 of, or the funereal items, whatever is unearthed.

7 MR. HARRIS: Okay, so they're in charge
8 of the religious and cultural aspects --

9 MS. TORRES: In conjunction with the
10 landowner.

11 MR. HARRIS: Okay, thank you. I guess I
12 want to make sure we're clear, too, we're on
13 agreement that the gasline definitely needs the
14 monitor. We are in agreement with that position,
15 in case that's not clear.

16 So, really what we're talking about is
17 the site, itself. We've had a discussion about
18 that, so I won't go there.

19 And the water line. My understanding is
20 that most of the water line is through city
21 streets, and that that area, the 10 mile area, is
22 pretty well characterized.

23 Is it your intent then that the monitors
24 be available in the vicinity of known sites? Or
25 are you thinking that they need to be available

1 during the entire construction of the ten miles?

2 MR. REINOBHL: I believe what we have
3 stated is they would be there for the full ten
4 miles. There has been historically development
5 along that whole area, including the roadways.
6 And development tends to obscure archeological
7 deposits.

8 There could also be buried deposits
9 along that route. There are sites known in the
10 vicinity of that route. So, it is prudent to have
11 that area monitored.

12 MR. HARRIS: Okay, thank you. I think
13 I'm going to end there. Just, we're looking for
14 ways to try to get our hands around how much we're
15 talking about here. Thanks.

16 One clarifying fact. I guess the water
17 pipeline is already under a federal MOA.

18 HEARING OFFICER VALKOSKY: You have to
19 speak in a microphone.

20 DR. BUSBY: I'd like to clarify that the
21 recycled water pipeline is already operating under
22 a federal MOA with the Bureau of Reclamation and
23 the Cities of San Jose, Santa Clara and the Cities
24 of Milpitas, and we, a couple years ago, developed
25 the mitigation monitoring plan for that particular

1 project, which has been approved by the State
2 Water Resources Control Board in the Chabot's
3 Office. That is why there is some duplication of
4 effort here.

5 And monitoring on that particular
6 project --

7 MS. WILLIS: I'm going to object at this
8 point. Is there a question for this witness?

9 HEARING OFFICER VALKOSKY: No, I think
10 he was just explaining the rationale.

11 MS. WILLIS: I was just not sure if
12 there's a question.

13 HEARING OFFICER VALKOSKY: No.

14 (Laughter.)

15 HEARING OFFICER VALKOSKY: Okay, I'm
16 sorry, Ms. Cord.

17 MS. CORD: I just wanted to ask a
18 question, never having been before, except
19 yesterday. Is it normal for witnesses to cross-
20 examine other witnesses? Is that how it's
21 conducted?

22 HEARING OFFICER VALKOSKY: We've
23 suspended the rules of normality. No, it is not
24 normal. Okay.

25 Mr. Harris, does applicant dispute the

1 wording of condition cultural-16?

2 MR. HARRIS: I think dispute is too
3 strong a word. I think we'd just like
4 clarification on, you know, -- all I'm clear on
5 now is it's not all the time. I'm just not sure
6 how much of the time.

7 And so if we could have some further
8 elaboration on what that last bit of phraseology
9 means, that would be helpful.

10 HEARING OFFICER VALKOSKY: Okay, you can
11 certainly direct those questions to the witnesses
12 from the Committee's perspective, if that
13 condition gets recommended for adoption, one of
14 the concerns the Committee has is fundamentally
15 the bottomline. Is the language, as contained in
16 the staff assessment, acceptable or not?

17 MR. HARRIS: If upon review of our
18 comments the Committee goes forward with that
19 language, we'll accept that language. We'd just
20 like you to take our comments into consideration.

21 HEARING OFFICER VALKOSKY: Thank you.
22 If you'd like to continue questioning the staff
23 panel, please feel free.

24 MR. HARRIS: That's all we have, thank
25 you.

1 CHAIRMAN KEESE: I have one more
2 question. In this clarification here, I see at
3 the front end of your condition 16 that we have,
4 prior to the start, of project site preparation.
5 Now, it sounded to me like you said that the
6 footpath, the project site is not one of those
7 areas that, recognizing that the pipelines are
8 also project, but here we have the term project
9 site preparation which sounds like everything.
10 And then you're suggesting but it's only when you
11 need cultural resources monitoring.

12 Are we saying -- should that be narrowed
13 to the pipeline?

14 MR. REINOBHL: What the condition says
15 is that prior to that period of time, that these
16 aspects of the project start, that the cultural
17 resource specialist consult with the Alohni
18 Coastal known Native American representatives to
19 develop the agreement is the timeline to start the
20 consultation for the agreement.

21 CHAIRMAN KEESE: Okay, so that doesn't
22 tie it in that any construction related vegetation
23 clearance would require a monitor, or earth
24 disturbing activities would require a monitor, or
25 project site preparation would require a monitor.

1 It's just prior to any of those taking place they
2 have an agreement. And then somebody would decide
3 which of these events were going to require
4 cultural monitoring?

5 MR. REINOBHL: The cultural resource
6 monitoring and mitigation plan will state what
7 areas will have to have full-time cultural
8 resource monitoring.

9 CHAIRMAN KEESE: And when do we see
10 that?

11 MS. TORRES: Condition 3(f), 3 small F,
12 states where it's full-time monitoring.

13 CHAIRMAN KEESE: And that's the one that
14 specifies what it is?

15 MR. REINOBHL: Right.

16 CHAIRMAN KEESE: Thank you.

17 HEARING OFFICER VALKOSKY: Okay, Mr.
18 Harris, did you have anything else for staff's
19 panel?

20 MR. HARRIS: No, thank you.

21 HEARING OFFICER VALKOSKY: Mr. Williams.

22 MR. WILLIAMS: Yes. First, let me thank
23 the Siting Committee and Mr. Valkosky and Ms.
24 Willis, your questioning was particularly helpful.
25 //

1 CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q I'd like to continue just briefly to
4 understand how cultural-16 would operate. My
5 understanding is that a five-foot cap is going to
6 be put on the site, because that's not invasive,
7 that would not be likely to raise any questions of
8 disturbance of any remains, is that correct? I'm
9 asking either of the witnesses.

10 Is there a cultural resource concern
11 when the applicant puts the five-foot dirt cap on
12 the entire site?

13 MS. TORRES: I believe that's the area
14 where trenching has already been conducted, and
15 where there won't be any monitoring required.

16 MR. WILLIAMS: That's my understanding,
17 as well. Now, hypothetically at least, subsequent
18 to that some footings may be dug for tanks and
19 foundations for the equipment of the power plant.

20 Now, it seems to me if those footings
21 were deeper than the five-foot cap, these footings
22 would have the potential of intruding on remains,
23 and therefore some limited monitoring would be
24 required during the digging of those footings, is
25 that correct?

1 MR. REINOBHL: The testing program has
2 come up negative. So if there were excavation
3 through that five foot of fill in the area where
4 the testing has already been accomplished, then
5 there will be no resources disturbed.

6 MR. WILLIAMS: Well, my understanding is
7 that the precise arrangement of the plant and the
8 footings is not yet known. And thus, it's not
9 clear whether trenches have been dug in the right
10 places or not.

11 MR. REINOBHL: The testing cleared the
12 area that was identified as the plant site.

13 MR. WILLIAMS: But on a sampling basis
14 if my recollection of the workshop is correct, you
15 only did some very limited number of trenches, if
16 I recall correctly. Can you remind me how many
17 feet of trenches were dug during that
18 characterization?

19 MR. REINOBHL: I would have to look back
20 through the report to give you the exact amount of
21 footage.

22 HEARING OFFICER VALKOSKY: Mr. Williams,
23 excuse me for a second, and again this is
24 addressed to staff's witnesses. Assuming that
25 cultural resources are discovered during actual

1 ground clearing or ground disturbance on the
2 project site, could you tell us what would happen
3 then?

4 MR. WILLIAMS: That's exactly where I
5 was headed, thank you.

6 MR. REINOBHL: There are conditions of
7 certification that require that the construction
8 staff be educated in cultural resources, what they
9 look like, how to identify them, so that if they
10 are seen during construction, even when there is
11 not a monitor present, that they can identify
12 those and report them. There are specific
13 procedures for the reporting.

14 The cultural resource specialist will be
15 notified. They examine the site and determine
16 whether there is something that is significant.
17 And if there is, there's further consultation
18 under those conditions of certification to address
19 impacts to that resource and to minimize those to
20 a degree that's less than significant.

21 HEARING OFFICER VALKOSKY: Okay, thank
22 you, sir. I think that's your answer, Mr.
23 Williams.

24 MR. WILLIAMS: Yes, if I could just --
25 hypothetically, despite the best sampling and

1 trench digging, nevertheless you stumble across a
2 bone. At that point does construction stop while
3 the significance of that bone is evaluated? What
4 happens when a bone is found?

5 MR. REINOBHL: Well, if a bone is found,
6 and it's reported as a cultural resource, the
7 cultural resource specialist will come on site and
8 examine it, and determine whether it's part of a
9 deposit or a site or some entity that is
10 significant or not.

11 And if it's significant, other
12 conditions will be followed that will address
13 impacts of the project and ways to reduce them to
14 be less than significant.

15 It may not be something significant.

16 MR. WILLIAMS: Well, just so I
17 understand the process, even though the applicant
18 has said there is no legal requirement for this
19 Native American specialist, if a bone is found
20 that is arguably Native American, does he have to
21 then go out and hire one?

22 MR. REINOBHL: If a bone is found that
23 is identified as Native American, state law
24 requires that it be reported to the County
25 Coroner. The County Coroner's required, in turn,

1 to report to the Native American Heritage
2 Commission who designates the most likely
3 descendent.

4 MR. WILLIAMS: Does construction stop
5 while that's happening?

6 MR. REINOBHL: Yes.

7 MR. WILLIAMS: Thank you. I appreciate
8 the questions of the Siting Committee. The way I
9 heard the discussion, the applicant agrees that
10 the resource impacts of the cultural-16 are
11 minimal and intends to abide by them. Is that
12 your intent, Mr. Harris?

13 MR. HARRIS: You're cross-examining me,
14 now?

15 MR. WILLIAMS: Excuse me.

16 HEARING OFFICER VALKOSKY: Mr. Williams,
17 I think, you know, both applicant's witness and
18 the staff witnesses have explained at some length
19 the procedures that are in place, either through
20 existing law or through the proposed conditions,
21 to deal with cultural resources.

22 I'm just --

23 MR. WILLIAMS: My other question to you
24 or to Ms. Willis, does this appear to be the
25 hypothetical situation turned into reality that we

1 talked about in Mr. Munro's testimony yesterday,
2 where arguably the applicant didn't agree with the
3 condition of compliance.

4 And so how does the project --

5 HEARING OFFICER VALKOSKY: I'm sorry,
6 that's not what I heard. I asked Mr. Harris
7 specifically if applicant agreed with the language
8 in cultural-16, and correct me if I'm wrong, but I
9 remember his response as being yes.

10 MR. WILLIAMS: And that is precisely
11 what I tried to say.

12 HEARING OFFICER VALKOSKY: Right.

13 MR. WILLIAMS: And he -- for cross-
14 examination, so --

15 HEARING OFFICER VALKOSKY: Well, but
16 that's --

17 MR. WILLIAMS: -- so I'll stop at this
18 point.

19 HEARING OFFICER VALKOSKY: Okay, thank
20 you.

21 PRESIDING MEMBER LAURIE: Mr. Valkosky,
22 before we move on, let me ask Ms. Torres one more
23 question because I'm curious about a statement you
24 previously made when I made inquiry about what
25 alternatives one might have available to

1 accomplishing the purpose that we desire to
2 accomplish.

3 You made reference to the fact that
4 there was basic distrust between I don't know if
5 you said the Native American community or
6 archaeologists, folks in the profession that
7 you're in and the contract.

8 And I was curious because my experiences
9 with the development community, I don't mean
10 specifically the energy development community, but
11 the broader development community, when you've had
12 strong management my experiences have been the
13 showing of, in fact, proper respect by
14 construction crews.

15 So, I'm wondering if your comment came
16 from personal experience, or an overall feeling
17 within your profession? Would you elaborate
18 briefly for me, please.

19 MS. TORRES: I think it's an overall
20 feeling within the profession, not necessarily
21 directed at developers. But based on past
22 insensitivity on the part of archaeologists and
23 anthropologists to Native American concerns.

24 PRESIDING MEMBER LAURIE: Have you
25 noticed any positive changes in the last decade

1 or --

2 MS. TORRES: Yes.

3 PRESIDING MEMBER LAURIE: -- two
4 decades? So can you attribute that to education?

5 MS. TORRES: I think education, and an
6 effort on the part of both sides to work things
7 out.

8 PRESIDING MEMBER LAURIE: Okay, thank
9 you very much.

10 HEARING OFFICER VALKOSKY: Mr. Scholz,
11 any questions? Ms. Cord? Speak into the
12 microphone.

13 MS. CORD: I think I am; I just don't
14 think it was on. Thank you.

15 Thank you, that was very helpful, both
16 of your comments.

17 CROSS-EXAMINATION

18 BY MS. CORD:

19 Q But I had a question. Mention was made
20 of the South Bay Water recycling pipeline route.
21 And the current alignment is what you've studied
22 that's in the FSA, correct?

23 MS. TORRES: I believe the alignment, I
24 believe it's supplement A. Is that the correct --
25 yes, supplement A is the route we're discussing.

1 MS. CORD: Okay, thank you. And
2 continuing on with that, we now have written
3 testimony submitted that San Jose does not have
4 plans to develop that alignment. And in fact, no
5 other entity can use the alignment that's under
6 the control of San Jose.

7 If water is going to get to the site
8 from some other way, what provision do you have
9 for monitoring whatever future alignment may be
10 considered?

11 MS. WILLIS: I'm going to object. These
12 are not the water witnesses. And at this point we
13 don't have that into testimony.

14 HEARING OFFICER VALKOSKY: Right. Let
15 me just clarify this. First, staff witnesses, is
16 the only water alignment route that you have
17 analyzed, is that contained in supplement A, is
18 that correct? Proposed water alignment --

19 MS. TORRES: At the beginning of the
20 project, with the proposed recycle route, yes.

21 HEARING OFFICER VALKOSKY: Okay, fine,
22 so that the existing analysis does not cover any
23 potential alternative alignment, is that correct?

24 MS. TORRES: We do have a condition that
25 says basically that if the applicant goes anywhere

1 other than areas previously subjected to cultural
2 resources assessment, that they will have to
3 provide us with an additional assessment,
4 including record search, a survey and evaluations
5 of anything they find.

6 HEARING OFFICER VALKOSKY: Okay, thank
7 you, I think they've just defined the scope of the
8 analysis.

9 MS. CORD: -- provision, thank you. And
10 would there be a further evidentiary hearing if an
11 alternative site is identified at some future
12 point?

13 HEARING OFFICER VALKOSKY: If there is,
14 this, I think, falls under the compliance. Mr.
15 Richins, correct me if this does not comport with
16 the staff procedure, but my understanding is that
17 would probably be a project amendment which would
18 be subject to the procedures Mr. Munro went over
19 yesterday?

20 In other words, if applicant, for
21 whatever reason, had to change something other
22 than what the project that was certified was, and
23 it's reflected in the conditions of certification
24 that the Commission may adopt, then they've got to
25 go through a formal amendment process, which is a

1 public process. And it is subject to an
2 environmental assessment by staff.

3 MS. CORD: Thank you. You mentioned,
4 Ms. Torres, about the outreach that you had
5 performed. You didn't mention which tribes, but
6 I'm curious if you were in contact with the
7 MiWukma Tribe, which is a large and active tribe
8 in this area.

9 MS. TORRES: The names that were
10 contacted were all people who were in Santa Clara
11 County. We didn't go outside Santa Clara County.

12 MS. CORD: Do you recall if that
13 included MiWukma Tribe?

14 MS. TORRES: Isn't it pronounced
15 MiWukma? Yes.

16 MS. CORD: Okay. And do you remember --
17 I don't see a list of the names. Is there one
18 or --

19 MS. TORRES: I'm not sure if it's
20 appropriate. I understand that it's a public
21 list, but can someone clarify for me whether or
22 not I can provide names?

23 MR. RICHINS: You can tell her the
24 source of the names.

25 MS. WILLIS: I would say at this point

1 if you want to tell her where you got the list
2 from, I think that would be appropriate.

3 MS. TORRES: The list was obtained from
4 the Native American Heritage Commission for Santa
5 Clara County.

6 MS. CORD: Thank you. Okay. You talked
7 about Santa Clara site SCL-249. Is that the
8 intersection generally of 101 and Metcalf Road?

9 MS. TORRES: We can't tell you the site
10 locations, even if we don't think that there's
11 anything there, because they're submitted to us
12 under confidentiality. So, we are obscure about
13 their locations on purpose.

14 MS. CORD: Okay. SCL-249, can you tell
15 me if you know where the western boundary of that
16 site is?

17 MR. REINOBHL: I know the site location.
18 If you're asking specifics of exactly where it is
19 on the ground --

20 MS. CORD: No, I'm not.

21 MR. REINOBHL: I do know where the site
22 is, yes.

23 MS. CORD: Okay. It's my understanding
24 that it's not clear where the boundaries of that
25 site are because the only portions of the site

1 that are known were discovered when 101 was being
2 excavated, the undeveloped property to the west of
3 that may or may not be a continuation of SCL-249.
4 Would you agree with that?

5 MS. WILLIS: Could you clarify, are you
6 asking him does he know where the boundaries are?
7 Is that your question?

8 MS. CORD: Do you know where the western
9 boundary of SCL-249 is located?

10 PRESIDING MEMBER LAURIE: Let me
11 interrupt a minute and I'll pose my question to
12 Mr. Valkosky.

13 We all know it's very important to keep
14 this information confidential, so before you ask
15 that question, Mr. Valkosky, I would want to know
16 the rationale for asking it. And then weigh the
17 importance of that answer with the absolute
18 critical need to retain this information as
19 confidential.

20 MS. CORD: Okay, can I clarify? I
21 haven't asked him where the boundary is. I asked
22 if he knows where the western boundary of SCL-249
23 is. I'm not asking him to identify that location.

24 PRESIDING MEMBER LAURIE: Well, you just
25 went on record as noting where you think the

1 western boundary is.

2 MS. CORD: Well, I asked him where he
3 thought it -- no, I don't think I said anything
4 about the boundary. I don't think it's known.

5 PRESIDING MEMBER LAURIE: Well, you did
6 identify a point, and we really don't want that to
7 happen, for obvious reasons.

8 I'll ask Mr. Valkosky, again, it would
9 be proper to weigh the reason for the question
10 with the potential threat to the confidentiality
11 that can come from the answer.

12 HEARING OFFICER VALKOSKY: Certainly I
13 think the witnesses are being very careful not to
14 divulge any boundaries or landmarks. As I
15 interpreted the question, it was just going after
16 the witnesses' general familiarity with the site,
17 without any specific boundaries. At least that
18 was what I was expecting.

19 Is that your impression of the question,
20 since you're the one that has to answer it?

21 MR. REINOBHL: I believe when she
22 initially asked the question as to whether I was
23 familiar with the western boundary, I said I was.

24 HEARING OFFICER VALKOSKY: Right, so
25 that you are familiar with the site, yes.

1 MR. REINOBHL: Yes.

2 PRESIDING MEMBER LAURIE: And then there
3 were follow-up questions.

4 HEARING OFFICER VALKOSKY: Right, but I
5 mean we're just -- I think the witnesses will be
6 careful not to give any identifying locations. Or
7 I would presume that they would be.

8 Okay, so anyway, Ms. Cord, what we've
9 got is we've got a witness who is familiar with
10 the site.

11 MS. CORD: Okay.

12 HEARING OFFICER VALKOSKY: And, again,
13 just be careful not to try to bracket that site
14 specifically. I think that's the major concern.

15 MS. CORD: That's all, thank you.

16 HEARING OFFICER VALKOSKY: Okay, any
17 redirect?

18 MS. WILLIS: No questions. I need one
19 procedural issue. We need to move the cultural
20 resources section into evidence.

21 HEARING OFFICER VALKOSKY: Okay, so that
22 would be --

23 MS. WILLIS: Exhibit 7, and then also
24 the changes that were part of cultural-2 as the
25 exhibit 11.

1 HEARING OFFICER VALKOSKY: Exhibit 11.

2 Is there objection? Hearing none, that portion of
3 exhibit 7 and the rest of exhibit 11 are admitted
4 into evidence.

5 Mr. Harris, did you finish moving
6 exhibit 6A, which was your group one testimony?

7 MR. HARRIS: I'm not clear, so let me do
8 that now, move 6A.

9 HEARING OFFICER VALKOSKY: Okay. Is
10 there any objection to admitting that?

11 MS. WILLIS: No.

12 HEARING OFFICER VALKOSKY: There is
13 none. Also received into evidence.

14 Is there any public comment dealing
15 solely with -- I'm sorry, I'm remiss. Mr. Boyd
16 had also indicated the desire to present witnesses
17 on the topic of cultural resources. I see Mr.
18 Boyd is not here. Does anyone have any further
19 information? Ms. Mendonca?

20 MS. MENDONCA: My pager went off today
21 and I was paged by a woman named Max Davidson who
22 said that she was to be Mr. Boyd's witness, and
23 she inquired about the timing of today's hearing.
24 When I told her it started at 2:00, she indicated
25 she would not be able to be here at this time, but

1 she said that her material had been submitted in a
2 letter submitted by Mr. Boyd.

3 HEARING OFFICER VALKOSKY: Okay, thank
4 you.

5 Is there any public comment dedicated
6 solely to the issue of cultural resources that
7 we've just discussed?

8 Please go to the podium and identify
9 yourself for the record.

10 MS. WONG: I'm Suzanna Wong. I
11 understand from the witness, the staff testimony,
12 that the site have been sampled in terms of the
13 resources. And I just curious about what the
14 sampling method has been. And especially in
15 relations to Mr. Bob Williams' comments that is
16 only, you know, to a certain depth and so forth.

17 HEARING OFFICER VALKOSKY: Okay. I
18 think they've discussed that. Since we have time,
19 could one of you briefly summarize the sampling
20 methods that will be required?

21 PRESIDING MEMBER LAURIE: With all due
22 respect, Mr. Valkosky, I think our time is going
23 to be eaten up. But, we have had testimony. Go
24 ahead and very briefly summarize your previous
25 testimony to the best of your recollection.

1 If you can -- I don't know, I thought
2 the question was basically to --

3 MS. WILLIS: I would suggest that the
4 applicant might be able to better answer that
5 question.

6 HEARING OFFICER VALKOSKY: Dr. Busby
7 might be able to answer it.

8 PRESIDING MEMBER LAURIE: Well, okay,
9 but we had 20 minutes of testimony on it. Are you
10 able to summarize it briefly?

11 HEARING OFFICER VALKOSKY: Dr. Busby.
12 Again, just a brief summary as to the sampling
13 methods.

14 DR. BUSBY: The sampling methods were
15 based on our 25 years of experience in this
16 particular area. And backhoe testing is typically
17 used in the Santa Clara Valley to expose areas
18 that you can examine in trenches. The trench is
19 usually five to ten feet long, by maybe six to
20 eight feet deep, in this case, sometimes we've
21 gone down to ten feet.

22 And it allows us to inspect both the
23 sediment that's removed from the area, as well as,
24 with safety reasons, get a sidewall profile
25 reading.

1 And in our report we have photographs;
2 we've described it and so on. The sampling was
3 intuitive. We would start at one of the areas on
4 a systematic grid, and if something came up that
5 looked suspicious we might move on to the next
6 one, and determine what was going on.

7 In all of these particular trenches that
8 we excavated, nothing was coming out that would
9 indicate cultural material. So typically we kept
10 on leap-frogging and moving along, and spacing it
11 fairly systematically, but intuitively, across the
12 site.

13 And most archaeologists in this area,
14 it's a standard procedure, and they would do that.

15 HEARING OFFICER VALKOSKY: Thank you.
16 That answers that question. All right, thank you.
17 With that, we'll close the record on cultural
18 resources.

19 I have Mr. Kreamer has indicated that he
20 would like to offer public comment. Mr. Kreamer,
21 you also indicated on your card a desire to cross-
22 examine Mr. Abreu. No, we're not going to permit
23 cross-examination of Mr. Abreu. If you would like
24 to -- unless applicant would like to volunteer Mr.
25 Abreu.

1 MR. KREAMER: Perhaps after I speak --

2 HEARING OFFICER VALKOSKY: Could you
3 please go to a microphone, sir, and identify
4 yourself.

5 PRESIDING MEMBER LAURIE: And can you
6 provide some clarification as to -- go ahead, sir,
7 and go up to the microphone. I'd like some
8 understanding as to the nature of your comment.
9 The reason being that we're going to reserve at
10 the end of these hearings opportunities for
11 general comment.

12 MR. KREAMER: I see.

13 PRESIDING MEMBER LAURIE: We are
14 specifically asking that any public comment being
15 made at these points in time make reference
16 specifically to the subject matter earlier
17 discussed, as you have provided comment earlier on
18 very specific subject matters.

19 And so we just heard cultural resources,
20 and we've had comment on cultural resources.

21 MR. KREAMER: Yes, I have --

22 PRESIDING MEMBER LAURIE: So, what's the
23 nature of your comment today?

24 MR. KREAMER: My comment is about
25 statements made by Mr. Abreu regarding that there

1 is site control.

2 HEARING OFFICER VALKOSKY: Sir, I think
3 we covered that yesterday.

4 MR. KREAMER: I had asked a single
5 question in order to determine whether I was
6 speaking as a citizen or whether I was speaking as
7 an owner of property. Because what I discovered
8 was that there was a transfer of property back to
9 Tulare Hill. By asking that single question I
10 found that I was not, by that transfer of property
11 back, not a property owner of the 14 acres that
12 was discussed.

13 I did not comprehensively address the
14 matters that I would like to have the capability
15 of doing.

16 CHAIRMAN KEESE: Mr. Chairman, my
17 observation would be that water is not on the
18 agenda today; air resources are not on the agenda
19 today; and site control is not on the agenda
20 today.

21 So, as the Chairman has indicated, at
22 the end of the hearing process you will be able to
23 make public comment on anything you'd like to make
24 a comment on. But --

25 MR. KREAMER: Thank you very much.

1 CHAIRMAN KEESE: -- we just have to
2 restrict it or we could wind up with 20 people
3 talking on everything here.

4 MR. KREAMER: Of course. Thank you. I
5 would just ask your guidance on when you think
6 that end might be --

7 CHAIRMAN KEESE: Mr. Chairman, do you
8 have an idea of how you're going to -- we have no
9 idea when the end of this process is, but I think
10 you heard the Chairman indicate at the end of the
11 process he intends to have public comment.

12 MR. KREAMER: Right, I'm wondering today
13 or some other --

14 HEARING OFFICER VALKOSKY: No, it will
15 not be today. We're looking some weeks into the
16 future.

17 MR. KREAMER: Thank you very much.

18 HEARING OFFICER VALKOSKY: You bet.

19 CHAIRMAN KEESE: You're welcome.

20 HEARING OFFICER VALKOSKY: Before we
21 move into the prehearing conference discussion, I
22 noted in going through some of my materials
23 yesterday that I needed a clarification on the
24 worker safety topic.

25 And really all I need to know is whether

1 my understanding is correct that questions
2 concerning the capabilities of the responders to
3 hazardous incidents questions concerning the
4 expected length of any hazardous materials
5 releases would be considered under the hazardous
6 materials management topic, is that correct?

7 MS. WILLIS: That is correct.

8 HEARING OFFICER VALKOSKY: Okay. I also
9 would like to know if your witness will be
10 prepared, as necessary, to possibly offer further
11 explanation on conditions of certification
12 contained in the worker safety and fire protection
13 section.

14 MS. WILLIS: Mr. Tyler will be here, and
15 he also coauthored the workers safety section, so
16 he would be able to address those questions.

17 HEARING OFFICER VALKOSKY: Fine, we'll
18 defer those questions till that time. Thank you.

19 All right, that concludes the
20 evidentiary portion of today's hearing, and
21 actually of this first set of hearings.

22 Before we take a recess, I'd like to
23 note what we're going to discuss during the second
24 portion, which will be the continuation of the
25 November 30th prehearing conference. Put outlines

1 on the table, and there are outlines back at the
2 door, discussing the topics which we have yet to
3 schedule for hearings. And I'd note that
4 biological resources is also one of these topics,
5 although we covered that at the previous
6 prehearing conference.

7 And the fundamental areas of inquiry for
8 the Committee are to get a fix on which parties
9 are presenting witnesses; how long they expect the
10 direct examination of the witnesses to take; which
11 parties desire to cross-examine on a various
12 topic; and how long they expect their cross-
13 examination to take.

14 Now, you'll notice on what I've termed
15 the discussion outline I've got question marks on
16 various parties, and also for cross-examination.
17 I'm assuming everything else there is correct. If
18 so, you need not comment on it. If anything there
19 needs corrected, please let me know in our
20 upcoming discussion.

21 Next, one of the items we'll be
22 discussing, and it really just involves applicant
23 and CVRP, is the Committee would like an update
24 on, or like a clarification of the status of the
25 pending discovery matters which we discussed at a

1 hearing in Sacramento last week.

2 And finally, the Committee is certainly
3 considering and would like the input of the
4 parties on the advisability, feasibility and
5 ground rules for conducting a hearing after the
6 conclusion of the substantive hearings, which
7 deals solely with the subject of override.

8 At that time I would expect basically
9 witnesses to be able to specify what parts of the
10 record they believe do or do not support an
11 override, as well as the attorneys prepared to
12 present argument on that topic.

13 And then finally would discuss the
14 desirability and potential timing for the final
15 hearing on these matters which would be devoted
16 entirely to public comment.

17 PRESIDING MEMBER LAURIE: Mr. Valkosky,
18 in regards to override, you indicated that you'd
19 be interested in hearing witnesses' comments about
20 criteria, et cetera.

21 I'm not foreseeing witnesses, are you?

22 HEARING OFFICER VALKOSKY: Okay, not
23 witnesses in -- witnesses in the legislative
24 sense. Not the adjudicatory sense.

25 PRESIDING MEMBER LAURIE: Okay.

1 HEARING OFFICER VALKOSKY: Okay.

2 (Laughter.)

3 MR. WILLIAMS: Clarify that, please?

4 HEARING OFFICER VALKOSKY: Yeah, what
5 that means is basically people getting up and, not
6 under oath, presenting their argument or their
7 policy reasons, if you will, that they believe
8 again, we should or should not, override. And the
9 criteria that they believe are relevant for the
10 Commission to make that determination.

11 And I would also address the parties to
12 section 25, 525 of the Warren Alquist Act, which
13 apparently is a good start-off point for those
14 criteria.

15 Okay, with that we'll recess until 3:45.

16 (Brief recess.)

17 HEARING OFFICER VALKOSKY: Okay, if we
18 could reconvene, please.

19 This is the second session of the
20 prehearing conference continued from November 30,
21 2000, as noticed in the Committee notice and order
22 of December 5th.

23 The topics to be discussed today are
24 those we previously referred to as group three.
25 That is the visual, air quality and public health,

1 as a combined topic, transmission system and
2 engineering, and local system effects, as a
3 combined topic. And alternatives.

4 The basic purposes are the same as at
5 the previous prehearing conference, namely to
6 ascertain who will present witnesses, who desires
7 to cross-examine and the respective amounts of
8 time desired for both activities.

9 As I mentioned before the break, in
10 addition the Committee would like to receive input
11 from the parties on the desirability of conducting
12 a separate hearing or hearings on the potential
13 override matters, as well as a day devoted
14 entirely to receiving public comment.

15 And finally, we'll ask applicant and
16 CVRP for any updates on their discovery matters
17 that we discussed last week.

18 Are there any questions?

19 MR. WILLIAMS: Could you clarify the
20 override issue? There have been a number of
21 petitions that have asked for a hearing that could
22 be construed as --

23 HEARING OFFICER VALKOSKY: When we get
24 to it I think that's the time to discuss it.

25 MR. WILLIAMS: Okay.

1 HEARING OFFICER VALKOSKY: Okay? That
2 is on the agenda. I'll note for the record CVRP
3 is present now, represented by Mr. Roger Beers.

4 MS. DENT: Mollie Dent, M-o-l-l-i-e,
5 Dent, D-e-n-t, for the City of San Jose.

6 HEARING OFFICER VALKOSKY: Okay, thank
7 you.

8 Starting with the topic of visual
9 resources, if you could all refer to the
10 discussion outline that I've prepared. The
11 witnesses and the parties desiring cross-
12 examination, as well as the times, I believe
13 accurately reflect the contents of the parties'
14 respective prehearing conference statements.

15 What I'd really like to do as quickly as
16 possible is to get indication if these are
17 correctly represented, and also where you see
18 questions marks obviously I need some further
19 specificity as to either the identity of the
20 witness, or the time desired for direct
21 examination.

22 So, with that, and referring solely to
23 the topic of visual resources, applicant, do you
24 have any changes?

25 MR. HARRIS: Yes, the applicant has, I

1 guess, requested two hours of cross-examination
2 for staff, City of San Jose and CVRP. So those
3 are for all three witnesses.

4 HEARING OFFICER VALKOSKY: Okay, so
5 that's a correct estimate on there?

6 MR. HARRIS: Yes.

7 HEARING OFFICER VALKOSKY: Fine. Staff?

8 MS. WILLIS: Yes, we have one additional
9 witness, Will Walters, W-a-l-t-e-r-s, that will be
10 addressing the visual plume issue.

11 And Mr. Donaldson is not available
12 February 19th through 22nd.

13 Otherwise, the 20 minutes is adequate.

14 HEARING OFFICER VALKOSKY: 19th through
15 the 22nd?

16 MS. WILLIS: That's correct.

17 HEARING OFFICER VALKOSKY: Thank you.

18 PRESIDING MEMBER LAURIE: Mr. Valkosky,
19 let me ask Mr. Harris, and the same question will
20 be to CVRP, I'm trying to visualize two hours of
21 cross on visual. And I don't see it. Can you
22 enlighten us as to what you're looking for, Mr.
23 Harris?

24 MR. HARRIS: I think that estimate
25 arises largely out of our experience in the Sutter

1 case where the visual was a big issue there, and I
2 think it will be a big issue here.

3 We have in the visual section both
4 questions of potential significant impacts under
5 CEQA and LORS noncompliance alleged. We disagree
6 with staff's position on those particular
7 findings. And that forms the basis for our
8 request.

9 PRESIDING MEMBER LAURIE: Okay.

10 HEARING OFFICER VALKOSKY: Staff, how
11 much time for cross-examination?

12 MS. WILLIS: Well, at this time we have
13 not seen others' testimony, so it's hard for us to
14 judge what we might cross. I would imagine
15 probably no more than 30 minutes.

16 HEARING OFFICER VALKOSKY: Understand,
17 these are only estimates, useful primarily for
18 scheduling purposes.

19 Okay, Mr. Beers, CVRP?

20 MR. BEERS: I think we are intending on
21 presenting testimony only, dependent upon the
22 testimony presented by applicant. So we'd like to
23 take a look at the applicant's testimony before
24 deciding whether we need to present any at all.
25 And that relates basically to the question of

1 whether the condition proposed can be met in terms
2 of the visible plume.

3 For purposes of cross-examination I
4 would think an hour would suffice.

5 HEARING OFFICER VALKOSKY: Okay. Again,
6 for scheduling purposes, which witness would you
7 possibly present?

8 MR. BEERS: That would be Mr. Radis.

9 HEARING OFFICER VALKOSKY: Okay, so
10 there would not be Mr. Adams at all --

11 MR. BEERS: No.

12 HEARING OFFICER VALKOSKY: And about how
13 much time would you anticipate taking for Mr.
14 Radis' direct?

15 MR. BEERS: Again, since it's dependent
16 on the testimony the applicant submits, --

17 HEARING OFFICER VALKOSKY: Understood.

18 MR. BEERS: -- at the outside I would
19 estimate an hour.

20 HEARING OFFICER VALKOSKY: Thank you.
21 Okay, Ms. Dent, City of San Jose had indicated its
22 desire to possibly present a witness on visual.

23 MS. DENT: Correct, Your Honor. I would
24 like to reserve maybe ten minutes for direct
25 testimony if the City decides to submit it, we

1 will look at the applicant's testimony and make
2 that decision based on the applicant's testimony.

3 It would probably be Mr. Edens, but
4 again, it would depend on the applicant's
5 testimony. And I'd like to reserve 20 minutes for
6 cross-examination, probably 10 and 10 each for the
7 applicant and staff's witnesses.

8 PRESIDING MEMBER LAURIE: And, Ms. Dent,
9 you're aware of the procedures requiring the
10 prefiling of testimony?

11 MS. DENT: Correct.

12 PRESIDING MEMBER LAURIE: Thank you.

13 HEARING OFFICER VALKOSKY: I'd just like
14 to emphasize to the parties, you can always choose
15 to withdraw a witness. We're just really looking
16 at this for scheduling purposes.

17 MS. DENT: I understand, and I do want
18 to clarify that as far as I know it would be Mr.
19 Edens if we were to submit the testimony. But it
20 might be another city planning department witness,
21 depending on availability. And, of course, I
22 understand that the person will have to be
23 identified when we file the written testimony.

24 HEARING OFFICER VALKOSKY: Great. No
25 problem there, then.

1 Okay, those were the witnesses and the
2 times identified in the prehearing conference
3 statements. I take it there are no changes.
4 Okay.

5 On cross-examination, and again just a
6 confirmation, Ms. Mendonca has confirmed the City
7 of Morgan Hill wanted ten minutes; intervenor
8 Ajlouney indicated yesterday he would like ten
9 minutes.

10 Ms. Cord, how about Santa Teresa, is 15
11 minutes still accurate?

12 MS. CORD: I believe so, yes.

13 HEARING OFFICER VALKOSKY: All right,
14 fine. CARE previously indicated ten minutes. Mr.
15 Williams, can you explain two hours?

16 MR. WILLIAMS: Somehow it was very
17 ambitious when this was drafted. I appreciate
18 very much your care in organizing it. I reduce my
19 request to 30 minutes, but I have one additional
20 request.

21 On page 346 of the FSA, which is the
22 section on visible plumes, the name of Mr. Dunn,
23 who was a consultant to the CEC Staff, -- decided
24 responsible for the estimates of plumes and plume
25 visibility, I'm hoping that the CEC Staff -- I do

1 not personally have the resources to pay for Mr.
2 Dunn's attendance, so I would request that Mr.
3 Dunn be made available for questioning on the
4 basis of his estimates of visible plumes.

5 HEARING OFFICER VALKOSKY: Okay, Mr.
6 Richins, response from staff?

7 MR. RICHINS: Yeah, we, too, would like
8 Mr. Dunn to be here. But we have been
9 unsuccessful in getting any information from him
10 or his attendance. So we share your concern, but
11 we have struck out. We're continuing to try, but
12 no amount of money will bring him here for some
13 reason. We had a contract with him, we're willing
14 to pay him, but he won't accept our money.

15 So, I don't know what to say.

16 (Laughter.)

17 HEARING OFFICER VALKOSKY: Can we expect
18 your continued best efforts?

19 MR. RICHINS: Yes, we will, and the
20 reason for the substitution was to provide us with
21 a backup plan.

22 HEARING OFFICER VALKOSKY: Thank you.

23 MR. WILLIAMS: Forgive me, who is the
24 substitute?

25 MS. WILLIS: That would be Mr. Walters,

1 Will Walters.

2 MR. WILLIAMS: Is he a CEC Staff member?

3 MS. WILLIS: No, he's not. He's a
4 consultant.

5 MR. WILLIAMS: Will Walters with what
6 company?

7 MS. WILLIS: He's with Aspen.

8 MR. WILLIAMS: As was Mr. Dunn?

9 MR. RICHINS: Subcontractor to Aspen.

10 MR. WILLIAMS: Thank you.

11 HEARING OFFICER VALKOSKY: Okay, fine,
12 anything else on visual? Mr. Garbett?

13 MR. GARBETT: Perhaps two minutes of
14 cross-examination that isn't covered by other
15 parties.

16 HEARING OFFICER VALKOSKY: Okay. I work
17 in five-minute increments, so it will probably
18 come out to five.

19 (Laughter.)

20 PRESIDING MEMBER LAURIE: It's great,
21 when I was in private practice and I used to bill,
22 I used to work in hour increments.

23 (Laughter.)

24 PRESIDING MEMBER LAURIE: That's very
25 good.

1 HEARING OFFICER VALKOSKY: All right.

2 We'll move off the topic of visual resources.

3 Next we've combined the topics of air quality and
4 public health, so these witnesses and cross-

5 examination will pertain to both individual topic
6 areas.

7 Mr. Harris?

8 MR. HARRIS: Reserved an hour, assuming
9 that we're going to get testimony from -- we
10 already have staff's testimony -- from CVRP, as
11 well. I guess that will be the major, and the
12 City of Morgan Hill.

13 So assuming that testimony does show up,
14 I think that's an accurate number.

15 HEARING OFFICER VALKOSKY: Okay, how
16 about for your direct? You've got two hours
17 indicated.

18 MR. HARRIS: For the combined --

19 HEARING OFFICER VALKOSKY: Yeah.

20 MR. HARRIS: -- I'm thinking that's a
21 little long. I think it can probably go down to,
22 let's move it down to an hour.

23 HEARING OFFICER VALKOSKY: To an hour
24 for the combined?

25 MR. HARRIS: Yeah, one hour for the

1 combined direct testimony.

2 HEARING OFFICER VALKOSKY: Correct.

3 Okay. Staff, you have not only the staff
4 witnesses, but a witness from the Bay Area Air
5 Quality Management District, as I understand it,
6 is that correct?

7 MR. RATLIFF: We will actually have
8 three witnesses from the Bay Area Air Quality
9 Management District, as I understand it. Mr.
10 Chang, who does the typical regulatory permitting
11 work; Mr. Launghn, who is the District modeler;
12 and
13 an --

14 HEARING OFFICER VALKOSKY: I'm sorry,
15 Dick, what was the second name?

16 MR. RATLIFF: Glenn Launghn is the name.

17 HEARING OFFICER VALKOSKY: Launghn?

18 MR. RATLIFF: Launghn.

19 HEARING OFFICER VALKOSKY: Thank you.

20 SPEAKER: Spelled a funny way, Launghn.

21 MR. RATLIFF: I don't know the spelling.

22 And a third witness not yet identified who may or
23 may not mean Mr. Lim will testify to present
24 supplemental testimony in the area of air quality
25 on the District's analysis and problems with

1 diesel backup generators in the San Jose area, and
2 their impact on air quality. Particularly during
3 periods of electricity interruption, electricity
4 service interruptions.

5 So that will be an additional piece of
6 supplemental testimony that will be filed -- the
7 District requested that they be able to file that
8 towards the end of this month or early next month.

9 HEARING OFFICER VALKOSKY: Okay, well,
10 we haven't established filing dates yet for --

11 MR. RATLIFF: I know that we also have a
12 Mr. Hill from the District Staff who's listed
13 here. And I'm not sure what, if any, role he has
14 in the District's -- on the District's witness
15 list. He may be being replaced by Mr. Launghn,
16 I'm not sure.

17 MS. WILLIS: He's Mr. James Launghn.

18 HEARING OFFICER VALKOSKY: Okay, again,
19 I certainly don't know. So you would have a total
20 of six witnesses?

21 MR. RATLIFF: WE have three witnesses
22 from the Bay Area District. We have Mr. Ringer
23 for public health and Mr. Badr for staff's air
24 quality witness. That's five.

25 HEARING OFFICER VALKOSKY: Five

1 witnesses.

2 MR. RATLIFF: Right.

3 HEARING OFFICER VALKOSKY: And how about
4 the time required?

5 MR. RATLIFF: Well, we put down 35
6 minutes last time. I think that's going to be
7 short. We ought to have at least 45 minutes for
8 that group. I'm not sure how long the District's
9 affirmative presentation would take.

10 HEARING OFFICER VALKOSKY: Is 60 minutes
11 sufficient, again for --

12 MR. RATLIFF: I think it should be.

13 HEARING OFFICER VALKOSKY: -- present
14 purposes?

15 MR. RATLIFF: I think it should be.

16 HEARING OFFICER VALKOSKY: Okay, how
17 about your cross-examination? And I understand
18 there are some unknowns, but --

19 MR. RATLIFF: I'd like to put down an
20 hour, but I'm hoping it will be a lot less.

21 HEARING OFFICER VALKOSKY: Okay, fair
22 enough. Anything else on air?

23 MR. RATLIFF: When I say an hour, an
24 hour collectively for all witnesses.

25 HEARING OFFICER VALKOSKY: I understood.

1 MR. RATLIFF: No.

2 HEARING OFFICER VALKOSKY: No, okay.

3 Mr. Beers?

4 MR. BEERS: I estimate one and a half
5 hours, again, at the outside, we'd seek to shorten
6 that, for Mr. Radis' testimony on air quality.

7 HEARING OFFICER VALKOSKY: Okay.

8 MR. BEERS: And in terms of cross-
9 examination we put down here eight hours. I would
10 estimate six. I know that seems like a lot, but
11 by my count, we could have up to six different
12 witnesses just from the staff and from the
13 applicant, and the six hours would be the combined
14 total for all of those witnesses. And, again, I
15 hope I can do it quicker.

16 HEARING OFFICER VALKOSKY: Okay. And,
17 again, Ms. Mendonca has contacted the City of
18 Morgan Hill, and at least to my knowledge present
19 estimates are both for direct testimony and for
20 cross-examination are sufficient for scheduling
21 purposes.

22 Ms. Dent, City of San Jose.

23 MS. DENT: I'll do the same thing on
24 this one, ten minutes if we decide to present
25 direct testimony. And would like to reserve 20

1 minutes for cross, to the extent that it's not
2 covered by other parties.

3 HEARING OFFICER VALKOSKY: Okay. And
4 who would your witness be for direct?

5 MS. DENT: Again, it would most likely
6 be Mr. Edens, or some other member of our planning
7 department.

8 HEARING OFFICER VALKOSKY: Okay, thank
9 you. And you said that was 20 minutes for --

10 MS. DENT: Cross.

11 HEARING OFFICER VALKOSKY: -- combined
12 cross? Okay. I'm sorry, Mr. Ratliff?

13 MR. RATLIFF: There is one other area
14 where staff is going to be presenting supplemental
15 testimony. And currently, the nature of that
16 testimony is to supplement material that appears
17 in the alternatives section of our testimony.

18 But I'm wondering, the nature of that
19 testimony is concerning the correlation between
20 health effects and electricity outage, and
21 particularly mortality from heat. That could be
22 also put under public health. And if you want to
23 schedule it there, that might be one of the
24 considerations you would take.

25 Now, otherwise it's going to appear on

1 the alternatives panel. Witnesses will be Allen
2 Greenberg and Rick Tyler -- Alvin Greenberg, I
3 believe it is.

4 MR. HARRIS: I'm sorry, could you
5 restate the subject of the testimony.

6 MR. RATLIFF: The subject of the
7 testimony is correlation between electricity
8 outages and mortality from heat.

9 MR. HARRIS: In northern California?

10 MR. RATLIFF: In California, but also
11 more generally.

12 HEARING OFFICER VALKOSKY: Okay. Now
13 how long would that testimony take, Mr. Ratliff?

14 MR. RATLIFF: I think it would take
15 about 20 minutes.

16 HEARING OFFICER VALKOSKY: Okay. Yeah,
17 without thinking about it a little more, frankly
18 I'm not sure where that should appear. I take it
19 your preference would be to put it in the public
20 health topic, is that correct?

21 MR. RATLIFF: It fits, in terms of the
22 relationship of topics, it fits. The original
23 testimony appeared under the no project
24 alternative portion of the alternatives testimony.

25 The supplemental testimony could be

1 presented in either place, but I wanted to make
2 you aware of the nature of it so you could decide
3 where you want to have it.

4 HEARING OFFICER VALKOSKY: Okay, thanks,
5 I appreciate that.

6 Okay, the Rancho Santa Teresa Swim and
7 Racquet Club had indicated they wanted to present
8 a witness, although the witness was unidentified.

9 MR. WILLIAMS: I believe that's Dr.
10 Wiktorowicz, himself.

11 HEARING OFFICER VALKOSKY: Is it, Mr.
12 Williams? Does anyone have any clarification on
13 that? I just don't recall. I thought -- I had it
14 down as an unidentified witness.

15 MR. WILLIAMS: Well, I think for now --

16 HEARING OFFICER VALKOSKY: Does anyone
17 know for sure, let me put it that way. Does
18 anyone know for sure the time desired? Okay.
19 We'll take that one under consideration.

20 Mr. Boyd, CARE had indicated 90 minutes
21 for direct testimony of its air quality public
22 health witnesses. Is that still correct?

23 MR. BOYD: You could make that 60
24 minutes, I think.

25 HEARING OFFICER VALKOSKY: Sixty

1 minutes, okay. And an hour for cross, is that
2 still correct?

3 MR. BOYD: Yeah.

4 HEARING OFFICER VALKOSKY: All right,
5 thank you. Mr. Williams, you had indicated in
6 your prehearing conference statement two hours
7 testimony for yourself and an unidentified
8 witness. Could you clarify that?

9 MR. WILLIAMS: Yes, I can clarify it at
10 some length now. First, I would like to address
11 the issue someplace in this proceeding as to the
12 mitigation for carbon dioxide. Now, does the CEC
13 want to be responsible for the guidance that
14 capturing carbon dioxide not be considered, or
15 should we have a California Air Resources Board?

16 I would like to have just brief
17 testimony so that it is on the record that some
18 government authority is deliberately ignoring the
19 local greenhouse gases.

20 HEARING OFFICER VALKOSKY: How are you
21 going to tie this into something that's relevant
22 for this --

23 MR. WILLIAMS: It's part of air quality.

24 HEARING OFFICER VALKOSKY: -- case?

25 MR. WILLIAMS: And it's part of --

1 HEARING OFFICER VALKOSKY: Okay, if
2 you're talking about the general level of carbon
3 monoxide --

4 MR. WILLIAMS: And dioxide --

5 HEARING OFFICER VALKOSKY: -- emissions
6 and dioxide --

7 MR. WILLIAMS: Yes. The carbon --

8 HEARING OFFICER VALKOSKY: -- from the
9 plant?

10 MR. WILLIAMS: Yes. There's substantial
11 quantities of carbon dioxide.

12 HEARING OFFICER VALKOSKY: Okay.

13 MR. WILLIAMS: There's what are killing
14 the polar bears --

15 HEARING OFFICER VALKOSKY: Okay, --

16 MR. WILLIAMS: -- polar bears and --

17 HEARING OFFICER VALKOSKY: -- Mr.
18 Williams, I'm just trying to get the nature, the
19 identity of the witnesses and the time.

20 MR. WILLIAMS: Okay. Someone from the
21 California Air Resources Board or the CEC Staff.
22 I know that the CEC Staff has held several
23 workshops on global greenhouse emissions. And so
24 I would like that witness to be prepared to
25 address why this project does not require planting

1 of trees to mitigate those gases.

2 HEARING OFFICER VALKOSKY: Well, that
3 sounds like a cross-examination question for the
4 staff's witness --

5 MR. WILLIAMS: -- Mr. Badr --

6 (Parties speaking simultaneously.)

7 HEARING OFFICER VALKOSKY: No, for one
8 of staff's air quality witnesses, as to the
9 sufficiency of the mitigation for the impacts from
10 the plant. Does staff see it differently?

11 MR. RATLIFF: Yes. And I think he said
12 Mr. Badr, and that would be the correct witness, I
13 think.

14 HEARING OFFICER VALKOSKY: Okay, Mr.
15 Badr, yeah. I'm sorry, I thought I heard Baker.
16 I'm sorry.

17 MR. WILLIAMS: Forgive me, I have a deep
18 and mumbley voice. The second issue is the issue
19 of the meteorological monitoring. That issue will
20 take just 15 minutes. And I guess I will handle
21 that in cross.

22 The third issue is the issue of SCONox.
23 And the vendor of SCONox has volunteered to appear
24 and present testimony on the experience and
25 practice with SCONox. I think that might take an

1 hour. Now, if CVRP or some more knowledgeable
2 intervenor is presenting that material, I would
3 prefer to let them handle it. I have to do all of
4 this on a gratis basis.

5 Mr. Beers, do you have any --

6 MR. BEERS: We will not be presenting a
7 witness on SCONOX.

8 MR. WILLIAMS: Thank you.

9 MR. BOYD: Stan, --

10 HEARING OFFICER VALKOSKY: Just a
11 minute, Mr. Boyd.

12 MR. BOYD: We will, that's who Greg
13 Gilbert is. He's from GoalLine.

14 HEARING OFFICER VALKOSKY: Oh, thank
15 you, okay.

16 MR. WILLIAMS: Oh, okay.

17 HEARING OFFICER VALKOSKY: Thank you.

18 MR. BOYD: And he will also cover CO, as
19 well, because that controls carbon monoxide, as
20 well.

21 MR. WILLIAMS: Yeah, but that's not CO2.
22 CO is carbon --

23 HEARING OFFICER VALKOSKY: Okay, so --

24 MR. WILLIAMS: So, in that case, I --

25 HEARING OFFICER VALKOSKY: -- so,

1 Mr. Williams, as I understood, and just let me
2 confirm this -- and I thank you, Mr. Boyd -- Mr.
3 Gilbert testifying on behalf of CARE will be
4 testifying to SCONOX, okay.

5 So now I'm still looking for you to
6 identify who your witnesses are and how much time
7 you need for direct.

8 MR. WILLIAMS: At this point I'm down to
9 zero witnesses. And because of these different
10 topics, I would need about one hour, between one
11 and two hours in cross-examination as those
12 various topics arise.

13 HEARING OFFICER VALKOSKY: Okay, so
14 you're not going to present any witnesses as
15 direct testimony. And you need somewhere between,
16 well, way about an hour and a half, that's the
17 middle figure for cross-examination, is that
18 correct?

19 MR. WILLIAMS: That's acceptable, thank
20 you.

21 HEARING OFFICER VALKOSKY: Okay. Mr.
22 Boyd, pardon me, did I confirm with you that an
23 hour is sufficient for your cross-examination?

24 MR. BOYD: Yes, you did.

25 HEARING OFFICER VALKOSKY: Okay, thank

1 you. Santa Teresa, 35 minutes, is that --

2 MS. CORD: We would first like to call a
3 witness in the area of public health.

4 HEARING OFFICER VALKOSKY: Okay.

5 MS. CORD: We'll be calling Dr. Wong.

6 HEARING OFFICER VALKOSKY: Okay, and --

7 MS. CORD: I believe that testimony will
8 be about 30 minutes.

9 HEARING OFFICER VALKOSKY: What will be
10 the nature of the testimony?

11 MS. CORD: We're still meeting on that,
12 but I believe it will cover areas of statistical
13 sampling.

14 HEARING OFFICER VALKOSKY: Okay,
15 regarding --

16 DR. WONG: It will be on the --

17 HEARING OFFICER VALKOSKY: I'm sorry,
18 ma'am, we can't hear you.

19 MS. CORD: Public health.

20 HEARING OFFICER VALKOSKY: You've got
21 to --

22 MS. CORD: Public health.

23 HEARING OFFICER VALKOSKY: Public
24 health.

25 DR. WONG: Public health assessment.

1 MS. CORD: Public health assessment.

2 HEARING OFFICER VALKOSKY: Okay, public
3 health assessment, so about 30 minutes. All
4 right.

5 MS. CORD: And I think the cross-
6 examination, with all these witnesses, will
7 probably be more than 35, more like an hour,
8 perhaps.

9 HEARING OFFICER VALKOSKY: Okay, so put
10 down 60 minutes.

11 MS. CORD: Thank you.

12 HEARING OFFICER VALKOSKY: All right, is
13 there anything else on the combined topics of air
14 quality and public health? Mr. Garbett.

15 MR. GARBETT: Yes, we would like to
16 present up to two witnesses. We may need a
17 subpoena for one witness for what you might call
18 courtesy reasons. And the testimony would be not
19 more than a half hour.

20 HEARING OFFICER VALKOSKY: Who are the
21 witnesses?

22 MR. GARBETT: Okay, they are
23 unidentified at this moment. Until we get the
24 capability of subpoenaing, one of them will remain
25 unidentified to that point.

1 HEARING OFFICER VALKOSKY: All right.

2 You realize that --

3 MR. GARBETT: You don't normally --

4 HEARING OFFICER VALKOSKY: -- let me
5 just confirm the fact that we will not allow a
6 witness to testify unless you submit prefiled
7 testimony --

8 MR. GARBETT: Yes, --

9 HEARING OFFICER VALKOSKY: -- whatever
10 the filing date is --

11 MR. GARBETT: -- it will be prefiled.

12 HEARING OFFICER VALKOSKY: Okay, is --

13 MR. GARBETT: You'll have all knowledge
14 of the person and the testimony beforehand.

15 HEARING OFFICER VALKOSKY: As long as
16 that's understood. Now, how about cross-
17 examination?

18 MR. GARBETT: Cross-examination, not
19 more than 30 minutes combined, with all the
20 witnesses.

21 HEARING OFFICER VALKOSKY: All right,
22 thank you.

23 MR. GARBETT: Probably less.

24 HEARING OFFICER VALKOSKY: Thank you.
25 Anything else on the air quality/public health

1 topics? Good.

2 I'm sorry, Mr. Boyd.

3 MR. BOYD: I just wanted to note that
4 Dr. Paw-U is not going to be present as in an
5 earlier filing prior to the hearing. We stated
6 that we no longer have sufficient funds to retain
7 experts. And Mr. Gilbert will be here, but he
8 will be here on a voluntary basis only. We won't
9 be compensating him.

10 HEARING OFFICER VALKOSKY: Okay, but Mr.
11 Gilbert -- so you're only presenting Mr. Gilbert
12 as your only witness, then?

13 MR. BOYD: Yes, it's the only witness
14 that we know for sure we have at this time.

15 HEARING OFFICER VALKOSKY: Okay.

16 MR. BOYD: The other volunteers.

17 HEARING OFFICER VALKOSKY: Thank you for
18 that clarification, appreciate it.

19 Anything else on these topics? Okay.

20 Next, transmission system engineering
21 and local system effects. And again, these have
22 been decided to be treated as combined topics.

23 Mr. Harris.

24 MR. HARRIS: I think the two hours for
25 direct is appropriate. In terms of the cross it

1 will depend on what other parties file.

2 HEARING OFFICER VALKOSKY: Right, but
3 right now we're looking at two hours as a ballpark
4 estimate?

5 MR. HARRIS: I'd imagine about a half an
6 hour for staff at most, probably less, probably a
7 lot less. But I'm concerned about looking at the
8 other filings first and then I can let you know
9 more once I see that.

10 HEARING OFFICER VALKOSKY: Okay, now to
11 my recollection, you had indicated that you may
12 call a witness from the Cal-ISO, is that correct?

13 MR. RATLIFF: The Energy Commission
14 Staff has, of course, Peter Mackin has presented
15 testimony with the staff witness Al McCuen.

16 HEARING OFFICER VALKOSKY: Right, I
17 understand --

18 MR. RATLIFF: You're thinking, I guess,
19 of a different policy level witness or --

20 HEARING OFFICER VALKOSKY: That's what
21 I'm trying to get clarification on. I'm just
22 going from the prehearing conference statements.

23 MR. HARRIS: Mr. Valkosky, that might be
24 a witness related to an override, if we get to
25 that point. So it's not for this topic.

1 HEARING OFFICER VALKOSKY: It's not for
2 this topic, fine.

3 MR. HARRIS: Yeah.

4 HEARING OFFICER VALKOSKY: Thank you for
5 that clarification. All right, Mr. Ratliff, Ms.
6 Willis?

7 MS. WILLIS: Just one clarification.
8 Mr. Mackin is representing transmission system
9 engineering testimony separate from staff, as part
10 of the Cal-ISO. And then also representing
11 testimony in conjunction with staff on local
12 system effects.

13 So I would imagine ten minutes maximum
14 for his separate transmission system engineering
15 testimony.

16 HEARING OFFICER VALKOSKY: Okay, and
17 then the other estimates, Davis and McCuen ten
18 minutes; and then the panel with Mr. Mackin, 30
19 minutes, is that still correct, then?

20 MR. RATLIFF: I'm looking here and I
21 don't see anything down for -- Davis and McCuen is
22 certainly fine. I think Mackin and McCuen may
23 take more than 30 minutes, I'm not sure.

24 HEARING OFFICER VALKOSKY: Okay, well,
25 what's an informed estimate, then?

1 MR. RATLIFF: Let's say 45 minutes.

2 HEARING OFFICER VALKOSKY: Okay. And
3 how about --

4 MR. RATLIFF: And in terms of cross-
5 examination I'd like to put down two hours with
6 the hope that it will be considerably less.

7 HEARING OFFICER VALKOSKY: Okay.

8 PRESIDING MEMBER LAURIE: Let me go back
9 to Mr. Harris' comment that you were going to save
10 a witness for override. It's my anticipation that
11 what we were going to do was leave a period of
12 time for argument. And that's where we got into
13 the discussion of what kind of witnesses.

14 Because whatever we determine the
15 override sections say, they will make reference to
16 the record. And the record will have evidence in
17 a number of different sections.

18 Part I would anticipate being in this
19 category. So, Mr. Valkosky, I'm interested in
20 your thoughts about this, but I would expect that
21 if parties choose to engage themselves in building
22 evidence on the override issues, that they bring
23 their witnesses in on the individual topic areas.

24 Because I don't want to be in a position
25 of taking --

1 HEARING OFFICER VALKOSKY: That's
2 correct.

3 PRESIDING MEMBER LAURIE: -- all this
4 evidence and then having to do it again.

5 HEARING OFFICER VALKOSKY: That's my
6 understanding. At least we're going to discuss
7 later on.

8 MR. HARRIS: That is our intent. And
9 I've got to take you back to, you know, our
10 initial thinking when we filed this in November.
11 The idea there, we were looking at the question of
12 policy witnesses, just as Mr. Therkelsen is listed
13 here. That is what we would be thinking about.

14 We definitely agree with the statement
15 we need to make our case in the individual
16 disciplines to build the record for the override.
17 So, thank you.

18 MR. RATLIFF: Staff is very supportive
19 of that, as well. But we wondered if there might
20 be two kinds of presentations that were talking
21 about, one being what you would call witness
22 testimony that goes to determining facts that are
23 in dispute; and one of which is more of a policy
24 nature or a summary nature, which I think is what
25 you're indicating.

1 That might be, for instance, what Mr.
2 Therkelsen would do for the staff in that period.
3 He wouldn't be really testifying as an expert on
4 air quality; he would be giving, actually he would
5 be giving a statement as to why the staff took the
6 position it took on the overall way that we
7 recommend that the Committee make its decision.

8 Likewise, if you were to include other
9 witnesses, for instance from TURN, I would think
10 that they would not come to speak to prefiled
11 testimony, but to give their view about what you
12 should do with the project overall.

13 The same might be true for the Mayor of
14 the City of San Jose, although he has, I think,
15 identified himself as a witness; he may be
16 thinking of that in a legislative sense, rather
17 than in a factual witness in an adjudicatory
18 sense.

19 So, we have the same view that I think
20 you have, but I guess we would hope you would
21 clarify exactly where these other witnesses fit
22 in, and what the nature of their testimony will
23 be. Will it need to be prefiled? Will they be
24 cross-examined? Or will they just give their
25 statements?

1 MR. BEERS: May I also speak to that
2 issue?

3 HEARING OFFICER VALKOSKY: Please, Mr.
4 Beers.

5 MR. BEERS: I understood Commissioner
6 Laurie to suggest that there would be an
7 opportunity to submit briefing of some sort on
8 this issue. And I want to make sure that we've
9 held at least that prospect open, because it seems
10 to me this is one of the most important issues
11 that the Commission will face in this proceeding.

12 If we are going to have any kind of
13 witnesses presenting testimony then it seems to me
14 we really do have to set them down for a period in
15 which they'll be subject to cross-examination. I
16 mean otherwise I don't know why that kind of
17 material couldn't be put into the briefing that
18 would be presented to the Commission.

19 HEARING OFFICER VALKOSKY: I was
20 thinking of at least, and again this is getting a
21 little bit ahead, I think, because I was just
22 trying to go through what I consider the
23 substantive evidentiary presentations.

24 Okay, we'll defer this issue of the
25 policy witnesses and the override until we go

1 through --

2 MR. BOYD: I've got a question --

3 HEARING OFFICER VALKOSKY: -- just one
4 second, Mr. Boyd -- till we go through the
5 evidentiary presentations. Because I'm looking at
6 these presentations as those necessary to
7 establish the basic facts of the case. Stuff the
8 Commission has to issue findings upon.

9 And I think there is a difference, and
10 perhaps I've been too careless using the phrase
11 testimony. I'd like to restrict testimony to that
12 which is offered under oath. There is the other,
13 the legislative version as Mr. Ratliff correctly
14 points out, which is nonsworn policy, if you want.

15 That's the discussion I'd like to defer
16 until we get through this. Right now I'm talking
17 about testimony in the evidentiary sense.

18 MR. BEERS: Just for clarification, is
19 Mr. Therkelsen dropped from transmission at this
20 point, then? I think for clarity --

21 HEARING OFFICER VALKOSKY: Okay, no, I
22 think -- and that's a fair question. Let's let
23 Mr. Ratliff answer that.

24 MR. RATLIFF: It somewhat depends on the
25 Committee's answer, but Mr. Therkelsen was put

1 down not really to be a factual expert, to do
2 prefiled testimony on transmission. He was put
3 down should the Committee want a policy witness
4 about the staff's overall view of the case.

5 HEARING OFFICER VALKOSKY: Understood.

6 MR. RATLIFF: And that was why he is
7 listed.

8 HEARING OFFICER VALKOSKY: Right. So,
9 the answer to that would be most likely at this
10 time. Let's just go through this and then we'll
11 have that next discussion, okay?

12 MR. BOYD: I'm just not clear which
13 override you're talking about, the CEQA override,
14 or the Warren Alquist override? The findings of
15 overriding consideration, or the override of the
16 land use decision by the city? Which one are we
17 talking about here?

18 HEARING OFFICER VALKOSKY: Talking about
19 the override as reflected -- the potential
20 override as reflected in the Warren Alquist Act.

21 MR. BOYD: So we're not talking about in
22 like CEQA override here, then.

23 HEARING OFFICER VALKOSKY: Well, we're
24 going to have that discussion in a minute, okay?

25 MR. BOYD: Before you go on, though, I

1 just want to raise once again that by allowing
2 these proceedings to continue without addressing
3 this issue of the override, we believe, and our
4 counsel's advised us that you're abusing your
5 discretion and you lack proper legal authority to
6 go forward with these proceedings. And your acts
7 or failures to act are causing CARE and other
8 intervenors and members of the public, including
9 the City of San Jose, actual harm by forcing us to
10 continue to participate or trying to participate
11 in an administrative review of a project that
12 can't be built unless you exercise your --

13 HEARING OFFICER VALKOSKY: Okay,
14 objection --

15 MR. BOYD: -- authority to override.

16 HEARING OFFICER VALKOSKY: Objection
17 noted. I'll note you made basically the same
18 request in a recent motion which --

19 MR. BOYD: Yes, and I just received --

20 HEARING OFFICER VALKOSKY: -- my
21 recollection --

22 MR. BOYD: -- from counsel, and he said
23 I have to repeat this over and over again.

24 HEARING OFFICER VALKOSKY: Well, I would
25 disagree. I don't think it has to be over and

1 over.

2 All right. So, Mr. Therkelsen would be
3 proposed as a policy witness. I take it that also
4 goes with the representative of TURN?

5 MR. RATLIFF: Yes, I mean this was a
6 suggestion from the staff. We have not contacted
7 TURN.

8 MR. WILLIAMS: Did any of you see the
9 TURN lady on television last night? She did a
10 good job.

11 HEARING OFFICER VALKOSKY: Okay, Mr.
12 Williams, please, let's keep comments -- okay,
13 we'll discuss the time for these witnesses when we
14 get to the override if you have an estimate of it.

15 Mr. Beers, you have Mr. Marcus
16 indicated?

17 MR. BEERS: Yes, and Mr. Marcus will be
18 presenting testimony on both this topic and the
19 alternatives topic. And I've got a combined
20 amount of time for his presentation. So if
21 they're going to be taken up on approximately the
22 same day, then it would work that way.

23 HEARING OFFICER VALKOSKY: How about
24 just a --

25 MR. BEERS: Then I'll have to go with

1 two hours for him there, and cross-examination at
2 three hours.

3 HEARING OFFICER VALKOSKY: Thank you,
4 sir. All right, now, Mr. Williams, you had
5 indicated certain witnesses, as well as yourself?

6 MR. WILLIAMS: Yes, sir. First let me
7 say that I think we should quit using transmission
8 system engineering and local system effects as the
9 euphemism for reasons to justify an override.

10 I think there are other reasons and
11 other considerations, and transmission system
12 engineering is complicated and confusing enough
13 without mixing it in with override.

14 So, I would strongly urge that you
15 separate the topic from the override
16 considerations that will motivate the Commission.

17 Having said that, after discussion with
18 Ms. Cord, ST Action is going to sponsor the
19 testimony of Mr. Tim Alton. And it can be viewed
20 as the transmission system studies for label that
21 will be a short simplification of all the
22 gobbledygook that has come out of Mr. Atkin and
23 others --

24 HEARING OFFICER VALKOSKY: Okay, Mr.
25 Williams, don't editorialize. Identify.

1 MR. WILLIAMS: Thirty minutes.

2 HEARING OFFICER VALKOSKY: Now, but that
3 will not be a witness you're presenting.
4 That's --

5 MR. WILLIAMS: Excuse me, I'm sorry, --

6 HEARING OFFICER VALKOSKY: No, no,
7 you're --

8 MR. WILLIAMS: So, I therefore will have
9 no witness at that juncture.

10 HEARING OFFICER VALKOSKY: Okay. How
11 about your cross-examination?

12 MR. WILLIAMS: If we have eliminated
13 override considerations I will be happy to reduce
14 my cross-examination to one hour. I think
15 override considerations should be a separate
16 topic.

17 HEARING OFFICER VALKOSKY: Okay, and
18 we're almost to that discussion.

19 MR. WILLIAMS: Yes.

20 (Laughter.)

21 HEARING OFFICER VALKOSKY: We're just
22 not there yet. Okay?

23 MR. WILLIAMS: Okay.

24 HEARING OFFICER VALKOSKY: Mr. Boyd, you
25 indicated ten minutes for cross, is that correct?

1 MR. BOYD: Yes, I have a question on
2 that, though.

3 HEARING OFFICER VALKOSKY: Sure.

4 MR. BOYD: I'm trying to figure out, as
5 many of you are probably aware, CARE is a party to
6 the FERC order EL00-98, which affects the ISO's
7 continued existence and the continued existence of
8 the ISO Board.

9 And a lot of these issues dealing with
10 the transmission system engineering and the local
11 system effects from this project relate to those
12 proceedings.

13 I'm curious to know what's the form, how
14 could I make that information that's been coming
15 out of FERC in this regard part of the record?
16 And what's the appropriate way to do that?

17 HEARING OFFICER VALKOSKY: You can
18 docket the information.

19 MR. BOYD: Just docket it --

20 HEARING OFFICER VALKOSKY: If it's
21 relevant --

22 MR. BOYD: -- if I could -- could I
23 include it in my prehearing brief is what I guess
24 I'm getting to.

25 HEARING OFFICER VALKOSKY: I'm not --

1 MR. BOYD: On this --

2 HEARING OFFICER VALKOSKY: -- not seeing
3 the information it's really tough to give a
4 judgment. If you docket it, it will be part of
5 the overall record of the proceeding.

6 MR. BOYD: Okay.

7 HEARING OFFICER VALKOSKY: I mean that's
8 about as far as I can go right now.

9 MR. BOYD: Okay, now the other question
10 I have is you understand that the ISO no longer
11 has a tariff in the state, and so --

12 HEARING OFFICER VALKOSKY: My
13 understanding of the ISO's situation is really
14 irrelevant for most purposes.

15 MR. BOYD: But you're calling him as a
16 witness. So how is it --

17 HEARING OFFICER VALKOSKY: No, I'm --

18 MR. BOYD: -- irrelevant?

19 HEARING OFFICER VALKOSKY: -- not
20 calling the ISO as a witness.

21 MR. BOYD: Well, staff is calling ISO as
22 a witness, and you're a member of staff, right?

23 PRESIDING MEMBER LAURIE: No, he's not.

24 CHAIRMAN KEESE: No.

25 HEARING OFFICER VALKOSKY: No, I'm not.

1 MR. BOYD: I thought I heard you saying
2 that there was Mr. --

3 MS. WILLIS: Yeah, Mr. Mackin will be
4 speaking, but Mr. Valkosky is not a member of
5 staff. Staff is calling the witness.

6 MR. BOYD: Oh, I'm sorry. Staff is --
7 so staff is calling the ISO witness, correct?

8 HEARING OFFICER VALKOSKY: That's my
9 understanding. I believe that's what Mr. Ratliff
10 said.

11 MR. BOYD: And staff understands the
12 nature of what's going on with the federal
13 proceedings? That's what I'm just curious, you
14 know, because it does relate to this.

15 SPEAKER: It doesn't matter.

16 MR. BOYD: It does matter.

17 HEARING OFFICER VALKOSKY: Well, okay,
18 you've got the position. I don't think we need to
19 go any further with that --

20 MR. BOYD: That's fine, I just wanted --

21 HEARING OFFICER VALKOSKY: Okay. Now, I
22 just want to know if your estimate for cross-
23 examination is reasonably accurate?

24 MR. BOYD: I'd like, if it's okay, I'd
25 like to bump it up to 30 minutes.

1 HEARING OFFICER VALKOSKY: All right.

2 MR. BOYD: -- something that I get in
3 will be able to be talked about?

4 HEARING OFFICER VALKOSKY: Understood.

5 Okay, Ms. Cord. I understand via Mr. Williams
6 that the Citizens Action Group is going to offer
7 Mr. Alton, is that correct?

8 MS. CORD: Yes, it is.

9 HEARING OFFICER VALKOSKY: All right.
10 What would be the nature of his testimony and how
11 long would the direct take?

12 MS. CORD: Transmission system and I'm
13 thinking more like an hour instead of 30 minutes.

14 HEARING OFFICER VALKOSKY: About an
15 hour, okay.

16 MS. CORD: And the 30 minutes for cross
17 I hope will be adequate.

18 HEARING OFFICER VALKOSKY: Okay.

19 MS. CORD: But, as others have stated, I
20 guess I need to know what we're talking about
21 under this heading. If this heading is discussing
22 override authority or override concepts, --

23 HEARING OFFICER VALKOSKY: Well, again,
24 we're going to have that discussion in just a
25 couple of minutes, but I believe the tendency is

1 to have a separate hearing on the override issue,
2 itself.

3 MS. CORD: Just as long as I'm leaving
4 it open that that would substantially change what
5 we would --

6 HEARING OFFICER VALKOSKY: Right, no,
7 that's --

8 MS. CORD: -- want to do in this
9 section.

10 HEARING OFFICER VALKOSKY: That's
11 understood.

12 MS. CORD: Thank you.

13 HEARING OFFICER VALKOSKY: That's
14 understood. Anything else on these topics? Does
15 the City have anything, I'm sorry, Ms. Dent.

16 MS. DENT: Yes, I think that I would
17 like to reserve ten minutes for direct, depending
18 on the applicant's testimony on this issue. And
19 20 minutes for cross.

20 HEARING OFFICER VALKOSKY: Mr. Edens is
21 the witness, or who?

22 MS. DENT: I will say Mr. Edens for now.
23 I will identify him for now. But, again, I
24 understand that we will have to put in written
25 testimony --

1 HEARING OFFICER VALKOSKY: Right, okay.

2 Yes, just basically a placeholder, okay.

3 Mr. Garbett.

4 MR. GARBETT: William Garbett speaking
5 on behalf of the public. We would like 30 minutes
6 reserved for cross-examination. Hopefully the
7 subjects will be beaten to death and we can waive
8 it at the time.

9 HEARING OFFICER VALKOSKY: Okay, sir.

10 I'm sure there will be many topics beaten in this
11 hearing.

12 Anything else on transmission system
13 engineering and local system effects? Ms. Cord.

14 MS. CORD: I don't know if this is the
15 right time, but in answer to Mr. Boyd's question
16 there was a discussion of docketing an item,
17 opposed to entering it into evidentiary hearing.
18 Can someone clarify for me how that would -- what
19 the difference is?

20 HEARING OFFICER VALKOSKY: Yes, there
21 is --

22 MS. CORD: I mean I know what the
23 process is. What is the difference in the weight
24 or review?

25 HEARING OFFICER VALKOSKY: Okay, it's

1 really a question of weight. Under the
2 Commission's regulations you can only make a
3 required finding based on materials in the quote,
4 evidentiary record.

5 That doesn't mean you don't consider the
6 stuff that's in the overall record. But it's
7 really kind of a theoretical point because if you
8 had to make a required finding, and all you had
9 was stuff in the administrative record and not in
10 the evidentiary record, arguably you couldn't make
11 that finding because it wouldn't be supported by
12 the weight of the evidence.

13 MS. CORD: All right.

14 MR. WILLIAMS: So just for perfect
15 clarification that's why Mr. Harris is moving
16 various things --

17 HEARING OFFICER VALKOSKY: That's
18 correct.

19 MR. WILLIAMS: -- forward into the
20 evidentiary record?

21 HEARING OFFICER VALKOSKY: Yes. And,
22 again, that doesn't mean that the stuff in the
23 broader overall record doesn't get considered.
24 It's just in a certain instance it would be a
25 matter of the weight that you'd have to assign it.

1 That's really what it comes down to.

2 I mean the Committee, in my experience,
3 certainly looks at everything that's there.

4 MS. CORD: Even if it's a ten-foot-tall
5 stack?

6 HEARING OFFICER VALKOSKY: You bet.
7 That's a short stack in some of these cases.

8 MS. CORD: Just checking. Thank you.

9 HEARING OFFICER VALKOSKY: Okay, next
10 topic, alternatives. Oh, I'm sorry, Mr. Scholz.

11 MR. SCHOLZ: Did I understand that you
12 were going to give all the parties an opportunity
13 to provide argument at the end of all this
14 evidentiary process?

15 HEARING OFFICER VALKOSKY: Okay, yeah --

16 MR. SCHOLZ: We have to refer to what's
17 been put in as testimony, not necessarily a
18 docketed document that --

19 HEARING OFFICER VALKOSKY: Yeah, your
20 argument is best based on the testimony. If there
21 if conflicting stuff you can bring that up, too.
22 Yeah, I mean there will be post-hearing briefing,
23 that's basically argument and stuff like that. We
24 haven't set a schedule for that yet because we
25 haven't finished the hearings.

1 MR. SCHOLZ: Is it going to be written
2 argument or verbal argument?

3 HEARING OFFICER VALKOSKY: Okay, when we
4 say briefing we're referring to written argument,
5 okay. There will be -- or one of the items on the
6 table for discussion is the desirability of having
7 a day solely to receive public comment. You know,
8 that's by its nature, oral, or can be oral. It
9 doesn't have to be oral.

10 That's one of the things we're going to
11 be discussing in, I hope, a few minutes.

12 So, Scott, maybe to the extent you've
13 got any questions we'll discuss them then, okay.

14 MS. CORD: Will those public comments be
15 part of the evidentiary hearing record?

16 HEARING OFFICER VALKOSKY: They will be
17 part of the general record, yes. They will not
18 be --

19 MS. CORD: So, docketed perhaps, but not
20 part of the evidentiary --

21 HEARING OFFICER VALKOSKY: They will not
22 be evidence as we technically define it, since
23 they're not given under oath, and they're not
24 subject to cross-examination.

25 That's part of the allocation of weight,

1 basically the legal theory being that if a witness
2 gives it under oath and is subject to cross-
3 examination by the other parties, the veracity of
4 that evidence has been tested. Moreso than
5 someone getting up and giving an opinion and not
6 being responsible for answering any relative
7 questions on it.

8 I mean that's, you know, the short-cut
9 explanation of the theory behind it.

10 MS. CORD: Thank you.

11 MR. BOYD: Stan, --

12 HEARING OFFICER VALKOSKY: Yes.

13 MR. BOYD: -- as I pointed before I
14 think that precludes meaningful participation.
15 Because it's not part of the evidence.

16 HEARING OFFICER VALKOSKY: Mr. Boyd, I'm
17 not going to address that issue here. I mean, you
18 know, we know you've made the objection --

19 MR. BOYD: Well, I'll just object again.

20 HEARING OFFICER VALKOSKY: Okay,
21 objection noted again.

22 All right, topic alternatives. Mr.
23 Harris.

24 MR. HARRIS: Yes, just one clarification
25 here. We've got 30 minutes for direct, and I

1 think that's sufficient. We are, I think, going
2 to be proposing a panel, just as staff has
3 proposed a panel, given that there's overlaps on
4 this issue related to water, visual and other
5 aspects.

6 And so in our prefiled testimony we'll
7 identify the members of that panel.

8 HEARING OFFICER VALKOSKY: Okay, so in
9 addition to my namesake there will be any idea how
10 many others? Two or three?

11 MR. HARRIS: Probably at least three,
12 and maybe four, again based upon other testimony.

13 HEARING OFFICER VALKOSKY: Okay, but the
14 time estimate would still be the same?

15 MR. HARRIS: Time estimates are the
16 same. I just wanted to clarify the panel
17 presentation --

18 HEARING OFFICER VALKOSKY: Okay, thank
19 you. How about cross-examination?

20 MR. HARRIS: I think that's probably a
21 solid time, as well, 90 minutes.

22 HEARING OFFICER VALKOSKY: Okay, thank
23 you. Ms. Willis, Mr. Ratliff, staff?

24 MS. WILLIS: Except for Mr. Tyler and
25 Mr. Greenberg's additional testimony that Mr.

1 Ratliff discussed earlier, that would be for 20
2 minutes, wherever you might put that. Our time
3 limit would be fine for alternatives.

4 I mean if you so chose to put their no
5 project public health testimony in alternatives,
6 then we'd add that 20 minutes to --

7 HEARING OFFICER VALKOSKY: Okay.

8 MS. WILLIS: -- that area. And then I
9 would think probably no more than 30 minutes for
10 cross-examination.

11 HEARING OFFICER VALKOSKY: Thank you.

12 MR. WILLIAMS: Excuse me, just a --

13 MS. WILLIS: And I just had one --

14 HEARING OFFICER VALKOSKY: Mr. Williams,
15 let Ms. Willis finish.

16 MS. WILLIS: Mr. Mackin, I requested
17 availability from our staff of Mr. Mackin. He is
18 unavailable February 7th through February 9th.

19 HEARING OFFICER VALKOSKY: Okay, thank
20 you. Anything further, Ms. Willis?

21 MS. WILLIS: No, sir.

22 HEARING OFFICER VALKOSKY: Okay, Mr.
23 Beers.

24 MR. BEERS: We estimate two hours for
25 Mr. Marcus, and again that's probably on the long

1 side. And two hours for cross-examination time.

2 HEARING OFFICER VALKOSKY: Okay, thank
3 you.

4 MR. BEERS: And let me clarify, I have
5 not been indicating witness availability in
6 connection with these. Should I have been doing
7 that? I thought that was going to come up under
8 scheduling.

9 HEARING OFFICER VALKOSKY: Yeah, the way
10 it looks now is I wouldn't worry too much about
11 February availability.

12 MR. BEERS: I've got some March dates,
13 too.

14 HEARING OFFICER VALKOSKY: Ms. Dent,
15 does the City have anything on alternatives?

16 MS. DENT: I think we may, again,
17 depending on the applicant's testimony. It might
18 possibly be two witnesses on that, Mr. Edens and
19 Mr. Shipes. Again, I would just reserve ten
20 minutes for the direct, and maybe 30 minutes for
21 cross on that one.

22 HEARING OFFICER VALKOSKY: Thank you.
23 Okay, Mr. Williams, you had identified yourself
24 and --

25 MR. WILLIAMS: Yes, in a more ambitious

1 frame of mind than I am today, therefore I will
2 withdraw the request to provide witnesses. I will
3 request only a half hour for cross.

4 HEARING OFFICER VALKOSKY: Okay. Thank
5 you, sir. Anything else for direct testimony on
6 alternatives? Ms. Cord, direct?

7 MS. CORD: I was going to talk about
8 cross.

9 HEARING OFFICER VALKOSKY: No, no, this
10 is only direct. Okay. All right, now cross.

11 MS. CORD: We don't have anything. I'd
12 like to reserve 30 minutes for cross.

13 HEARING OFFICER VALKOSKY: Okay. Mr.
14 Garbett.

15 MR. GARBETT: Yes, William Garbett. I
16 would reserve 15 minutes for cross.

17 HEARING OFFICER VALKOSKY: Thank you.
18 Mr. Boyd, 30 minutes still stand?

19 MR. BOYD: I should probably bump that
20 up to 60 minutes because staff has found some
21 feasible alternative sites, and CEQA precludes you
22 from approving a project without the CEQA override
23 is my understanding.

24 And so I think 60 minutes would be more
25 advantageous.

1 HEARING OFFICER VALKOSKY: Okay. Thanks
2 for the estimate. I would also like to note that
3 biological resources, in addition to the
4 enumerated topics, has not been scheduled.

5 So we will be scheduling that, although
6 my recollection, at least, we have dealt with that
7 at the November 30th prehearing conference.

8 MR. BOYD: I have a question on that.

9 HEARING OFFICER VALKOSKY: I'm sorry,
10 yeah, please.

11 MR. BOYD: Will you be scheduling that
12 topic before or after the U.S. Fish and Wildlife
13 Service issues its biological opinion?

14 HEARING OFFICER VALKOSKY: My
15 understanding, my most recent understanding was
16 that Fish and Wildlife will issue its biological
17 opinion at the end of this month, and biological
18 resources will not be scheduled for the month of
19 January, so make sure --

20 MR. BOYD: So the answer is yes --

21 HEARING OFFICER VALKOSKY: Yes, that's
22 assuming that they issue the report. Is that
23 correct, staff? Is that understanding correct?

24 MS. WILLIS: That was my most recent
25 understanding. I haven't talked with our

1 biologist in the last week or two, but that was my
2 understanding, that it would be sometime after the
3 first of February.

4 HEARING OFFICER VALKOSKY: Thanks.

5 MR. HARRIS: Mr. Valkosky, that's our
6 understanding, as well, and I'd also note that in
7 the Delta case and I believe in the Sutter case,
8 as well, the evidentiary hearings on biology went
9 forward with the witness from the Fish and
10 Wildlife Service available to testify. And the
11 biological opinion subsequently filed in those
12 proceedings. There is some precedent --

13 HEARING OFFICER VALKOSKY: Mr. Harris, I
14 understand that, but it's, you know, it's a matter
15 of practicality, part of the reason biological
16 resources was not scheduled was the fact that the
17 staff witness is out of the country. So we're
18 dealing more with a confluence of factors rather
19 than any deliberate decision.

20 MR. HARRIS: You know, how long is the
21 staff witness out of the country?

22 MS. WILLIS: She will be returning
23 February 2nd, and available February 3rd.

24 MR. HARRIS: Okay.

25 HEARING OFFICER VALKOSKY: All right.

1 Okay, filing dates. On the bottom of that sheet,
2 and I want to emphasize these are only possible
3 filing dates, but we're going to have to establish
4 filing dates for the direct testimony, first from
5 the applicant, then from the other parties, and
6 rebuttal from the applicant.

7 And what I'm looking for is a way to get
8 a handle on whether these dates are realistic, or
9 if there's any suggested dates. Mr. Harris.

10 MR. HARRIS: We do have suggested dates.
11 Actually we have a handout that we put together
12 this morning feverishly, preparing to come over.
13 And basically -- I guess I'd like Mr. Abreu to
14 provide some context for these dates, because I
15 think they'll give you a good indication of why we
16 put together this proposed schedule, and why we
17 think it's workable. Not only workable, we think
18 it's absolutely imperative that if we're going to
19 try to bring this plant on line in 2003, that we
20 get a decision by June of this year.

21 And what we've done essentially is work
22 back from those dates. And so let Mr. Abreu, if
23 he would, explain some of the logic behind these
24 proposed dates.

25 MR. ABREU: Thank you, Mr. Harris. This

1 is Ken Abreu. Let me just outline, I'm not going
2 to go through the details of this now, what we put
3 together here is a schedule that is updated from
4 the one we submitted before the prehearing
5 conference.

6 I think the key points that we have in
7 there is a CEC decision would take place in June
8 of this year. We feel that's a very reasonable
9 and sensible target. And it's also a very
10 important target to meet.

11 June of this year would represent two
12 years since the project had been deemed data
13 adequate. That's a lot of time to take a project
14 through the process.

15 The final staff assessment on this
16 project was issued in mid October of last year.
17 So, if we hit a June decision date, you're talking
18 about an eight-month period from an FSA to a final
19 decision. That's certainly a reasonable amount of
20 time.

21 We feel it's important, and I think it's
22 important that if this project goes ahead, to have
23 it on line for the summer of 2003. And getting a
24 decision in June of 2001 keeps that as a feasible
25 option.

1 If we get off into another set of delays
2 we may miss that summer and the impact on the
3 economy of the state, the economy of the area,
4 reliability, is critical.

5 PRESIDING MEMBER LAURIE: Let me
6 interrupt. I don't want to hear that. What I
7 want to hear is what dates you're prepared to file
8 your direct.

9 MR. ABREU: Okay.

10 MR. HARRIS: Let me go through then the
11 document that was passed down, and give you a
12 little more context. And actually, I've added up
13 the times for the proposed direct and cross. And
14 then you'll find a confluence, to use the word of
15 the day here, as well.

16 What we've done, if you'll look in the
17 box that's listed as testimony filed, because the
18 previous events are the events that have already
19 taken place, the prehearing conference on November
20 30, and the evidentiary hearings that we're
21 participating in right now.

22 What we've done is grouped the six
23 remaining topics into two groups, and we've
24 cleverly called them 3A and 3B. Biology and air
25 quality and public health.

1 Air quality and public health, I think
2 we all agree, are topics that are related and
3 should go together as a group. They're also
4 topics in which the preliminary staff assessment
5 and final staff assessment and the final
6 determination of compliance have been out for
7 quite some time now, since last fall.

8 The biological issue, we understand that
9 the only piece of information that's outstanding
10 for the evidentiary record is the biological
11 opinion. And everybody has reached the same
12 conclusion, that that would be available in
13 time. And so therefore we put those together
14 as a group.

15 The group 3B are the remaining topics,
16 visual, alternatives and transmission system
17 engineering and local system effects, put those
18 two together.

19 Essentially what we've done is propose
20 filing dates. And the first filing date of the
21 applicant for group 3A is the 17th of January; and
22 that's a date that we know we can make because
23 we've been working on this testimony. We've told
24 our folks all along they need to assume one week
25 after the prehearing conference they're going to

1 have to be prepared to file testimony on these
2 subjects.

3 Breaking it into two groups, also gives
4 us the ability to work on one set of testimony.

5 We've given other parties an additional
6 week to file their direct testimony, although I'm
7 not sure that I heard anybody wanting to file
8 direct testimony.

9 And let me make the distinction between
10 other parties' direct testimony and other parties'
11 rebuttal testimony. We've heard several people
12 say, well, our testimony will depend on what we
13 see from the applicant.

14 In that sense they're talking about
15 rebuttal testimony, and we've got a date there
16 that's farther out. In terms of other prepared
17 testimony there's nothing to preclude those people
18 from having prepared that testimony, even if it's
19 coming forward.

20 And so the reason we didn't put all
21 testimony together is we followed suit with the
22 previous filings that the Committee had done. So,
23 we divided those by the week.

24 The group 3B testimony, again, visual,
25 alternatives and transmission safety, broke them

1 out and basically everything there is a week
2 following on. The idea that we'd likely have two
3 sets of hearings. We'd like to do these faster,
4 but I think realistically we're thinking at least
5 two weeks to do the hearings.

6 And so the 3B dates, as you'll notice,
7 for example, applicant is 1/17 on 3A, and then
8 1/24 on 3B, so we've got basically a week trailing
9 for each of those to correspond with the proposed
10 hearing dates trailing.

11 The hearing dates that we have for group
12 3A, the 13th, 14th and 15th, parallels again the
13 previous dates set by the Committee. If you look
14 back through the previous orders of this Committee
15 and this proceeding, there's been approximately a
16 month from applicant's filling to hearing. We put
17 those dates together based upon that.

18 And you'll see basically two sets of
19 hearing dates back to back. We have four days in
20 the group 3B. I'm thinking that that was
21 generous. I would note that that would also offer
22 an opportunity for the parties to have this policy
23 testimony, if you want to have that at the end on
24 that fourth day.

25 Just based on the rough numbers that we

1 came up with from the cross-examination requests,
2 for the group 3A proposals, we've put together, we
3 have about 20 hours of air quality and public
4 health. We also have the biological -- that's
5 direct and cross requests, about 20 hours; six
6 direct, 14 cross.

7 The biological we didn't do yet. But
8 even if you were to assume, you know, a full day
9 there, it works out nicely for three days with
10 hearings, especially assuming that people don't
11 use their full allotments for the direct and
12 cross. And so we think that's a reasonable
13 division of time.

14 The group 3B again works out fairly
15 well. The direct time there for visual was about
16 eight hours; there's about 16 hours on
17 transmission systems; and about 10 hours on the
18 alternatives, for a total of about 55 hours,
19 assuming everybody uses their full allotment of
20 time, and again we'll hope and pray that they
21 don't use their full allotment of time. Again,
22 four days would allow for that kind of schedule.

23 A couple other thoughts on how we put
24 this together. We also think it's important that
25 people make themselves available for those

1 hearings. I know the Committee is really trying
2 to put together a schedule that accommodates
3 people's work schedules and their lives.

4 We also think, though, that the
5 Committee needs to seriously consider starting the
6 hearings earlier in the day. And also holding
7 those hearings at a venue with food service. And
8 we would suggest The Grange. I know that the
9 people who like the brownies would agree that room
10 is the same size as this room, if not larger. And
11 I think combining the food service with that
12 location would make this type of a schedule more
13 presentable.

14 You'll see we've provided time in there,
15 as well, in our proposed schedule for opening
16 briefs and reply briefs, the PMPD, revised PMPD,
17 and the Commission decision.

18 And so basically what we did is we
19 worked from both ends on this thing. We started
20 with the current situation. We worked feverishly
21 to get the decision in June. We think that's a
22 fair date. As Mr. Abreu has noted, that would
23 be -- June 23rd would be exactly two years from
24 data adequacy. It would also be exactly two years
25 preconstruction, and we're always talking about

1 18- to 24-month construction schedule.

2 And so with those constraints in place,
3 we've put together this schedule which is
4 realistic and aggressive. And the reason I'm
5 saying it's realistic is because to the extent
6 parties have their own testimony to file, there's
7 nothing to stop them from writing that testimony
8 now.

9 To the extent that the parties have
10 rebuttal testimony, there's ample time in this
11 proposal to allow for that rebuttal testimony.

12 And so we think that it's absolutely
13 imperative that the Commission take a good look at
14 this proposed schedule. It's very aggressive.
15 The hearings will be over, based on this schedule,
16 by the end of February, but it's completely
17 realistic.

18 It's not the end of this proceeding, as
19 we all know. But it provides us with a framework
20 for the Commission to be able to put together the
21 decision to meet that target of a decision by June
22 of this year, for the reasons stated going back,
23 and for the reasons going forward.

24 HEARING OFFICER VALKOSKY: Okay, thank
25 you for your suggestions. Am I to understand that

1 applicant would be prepared to file direct
2 testimony on the topics specified on the dates
3 given?

4 MR. HARRIS: Yes. The dates, 17th day
5 is the date we've been targeting since --

6 HEARING OFFICER VALKOSKY: Got you.

7 (Pause.)

8 MR. WILLIAMS: Mr. Valkosky, could we
9 comment briefly.

10 HEARING OFFICER VALKOSKY: Yes, just a
11 minute, Mr. Williams, that's what we're going to
12 do. I'd like, before we get into everyone
13 commenting, the Committee is viewing this as a
14 suggestion. It summarizes applicant's position.
15 It does establish the dates by which applicant is
16 able to file its testimony.

17 I'd especially like to note that as far
18 as any hearing dates are concerned, the Committee
19 is not prepared to assess its availability on any
20 of these dates. And any events such as the filing
21 of briefs subsequent to the conclusion of the
22 hearings depend, of course, on the actual date
23 that the hearings conclude.

24 With that in mind, and assuming that
25 applicant would file its group 3A testimony on

1 January 17th, and its 3B testimony on January
2 24th, what I need to know is, again, the realistic
3 amount of time the other parties need to file
4 their testimony.

5 MR. WILLIAMS: Could I just please
6 comment on how burdensome that would be. Let me
7 remind you that you scheduled three days of
8 hearings, or at least two days of hearings, the
9 17th, 18th and 19th of January.

10 Arguably, at least, that leaves us one
11 or two days if we're devoting --

12 HEARING OFFICER VALKOSKY: I understand
13 that, and again, Mr. Williams, when it's your turn
14 you can give your impressions of applicant's
15 proposal, okay? I'm just going to go around the
16 table like I've been doing.

17 MR. WILLIAMS: Thank you.

18 HEARING OFFICER VALKOSKY: Okay?

19 MR. WILLIAMS: Yes.

20 HEARING OFFICER VALKOSKY: Ms. Willis.

21 MS. WILLIS: Thank you. We appreciate
22 the proposed schedule and applicant's concerns;
23 however, staff would find that a week to provide
24 rebuttal testimony would be insufficient in this
25 case.

1 I think what we're finding is --

2 MR. HARRIS: It's two weeks -- this is a
3 point of confusion --

4 MS. WILLIS: I mean the rebuttal
5 testimony to other parties, as well, is only a
6 week.

7 MR. HARRIS: Yeah, which is what it is
8 currently in the schedule for this proceeding.

9 HEARING OFFICER VALKOSKY: No, the way
10 it works currently is applicant files its direct
11 testimony. The other parties then may or may not
12 file testimony. And I guess you could look at it
13 as rebuttal testimony, because I think the
14 decision the other parties make depends on what
15 applicant files.

16 After that applicant then gets a time to
17 file its rebuttal testimony, or what is called
18 rebuttal testimony.

19 MS. WILLIS: So, let me clarify. I'm
20 having people talking at me. The applicants on
21 the Committee's possible schedule, the February
22 9th date would be when other parties would be
23 filing testimony such as the City of San Jose or
24 other --

25 HEARING OFFICER VALKOSKY: That's

1 correct.

2 MS. WILLIS: And then staff would be
3 allowed to file rebuttal testimony on the 26th of
4 February?

5 HEARING OFFICER VALKOSKY: No, other
6 parties --

7 MS. WILLIS: Or just the applicant?

8 HEARING OFFICER VALKOSKY: That's just
9 the applicant.

10 MS. WILLIS: Okay.

11 HEARING OFFICER VALKOSKY: Just the way
12 it's going now. Applicant on the Committee's --
13 again it's possible filing dates -- January 25th
14 is listed as the date applicant would file its
15 direct testimony.

16 All other parties wishing to file
17 testimony would then file on February 9th.
18 Applicant could then file rebuttal testimony on
19 the 26th.

20 MS. WILLIS: Thank you for --

21 HEARING OFFICER VALKOSKY: That's the
22 construct that we view so far.

23 MS. WILLIS: I think I would agree with
24 Mr. Williams, with the schedule being the way it
25 is, with a couple of weeks taken up with hearings

1 in January, it will be difficult, although we have
2 already filed our final staff assessment, I did
3 understand that we'd be filing some supplemental
4 testimony in air quality or the public health
5 area. So that might be something that we would
6 need to consider that date.

7 MR. RATLIFF: We can do that by February
8 9th, by the way. That's a date we definitely can
9 meet and which the Air District says they're
10 prepared to meet, as well, so --

11 HEARING OFFICER VALKOSKY: Okay.

12 MR. RATLIFF: -- is that the date we're
13 talking about, February 9th?

14 MS. WILLIS: Well, actually we're
15 talking about the applicant's schedule, would be
16 the 24th of January.

17 HEARING OFFICER VALKOSKY: Right.

18 MR. RATLIFF: Okay, well, the 24th,
19 then, is a more difficult date for BAAQMD. They
20 said they could have it by the end of the month.

21 HEARING OFFICER VALKOSKY: In order to
22 understand this discussion, applicant's proposed
23 schedule does not deal with the hearings on the
24 17th, 18th and 19th, 30th, 31st, or 1st.

25 In order for me to understand the two

1 documents, what I'm hearing in front of me, I'd
2 like to know whether we are feeling that we will
3 accomplish what we have on our agenda for the
4 17th, 18th and 19th, 30th, 31st and 1st, and I'd
5 like to hear applicant and staff respond to that.

6 Is it your impression that we'll make
7 it?

8 MR. HARRIS: Yes, in fact I think we
9 probably allowed too much time for those dates.
10 If I recall, the group 2A, 17th, 18th and 19th is
11 only two subjects, is that correct?

12 I'm sorry, noise, soils and water,
13 traffic and transportation, hazards, four
14 subjects. So we've allowed three days for four
15 subjects on that thing. I think that's ample.
16 And I'd also note that all the materials related
17 to those hearings have been filed already, as I
18 understand it.

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. HARRIS: With the 30th, 31st and the
21 1st, those are -- that's two issues, socio and
22 land use. So we have three days of hearings for
23 two subjects --

24 HEARING OFFICER VALKOSKY: All right,
25 staff, do you think that is a --

1 MS. WILLIS: I think I'd agree, I think
2 we will accomplish what is intended for the next
3 2A and 2B group.

4 CHAIRMAN KEESE: Okay, and it would
5 be --

6 MS. WILLIS: I don't think that's an
7 issue.

8 CHAIRMAN KEESE: -- it would be my
9 observation, in looking at and remembering those,
10 which I don't have in front of me, and looking at
11 what we have just outlined for the future here,
12 that there's obviously people have allowed cross-
13 examination, which is going to be highly redundant
14 if all of this cross-examination takes place.

15 And I've noted that even over the last
16 couple days the cross-examination redundancy has
17 shrunk somewhat.

18 So I would hope that, I'm sure the
19 Committee will be -- Mr. Chairman, I'm sure that
20 this Committee will do its utmost to make sure
21 that redundancy is not a problem here.

22 I think that sets a context for me to
23 understand what we're talking about, thank you.

24 HEARING OFFICER VALKOSKY: Okay, now,
25 and again, believe me, the Committee realizes the

1 pending hearings we have.

2 Mr. Ratliff, so I indicate that you
3 would not favor -- or do I understand that staff
4 would not favor the filing dates as proposed by
5 applicant, but would rather have something on the
6 order of February 9th or thereabouts? Is that a
7 fair statement?

8 MS. WILLIS: I think that would be a
9 fair statement. I think our concern is just
10 having filing dates when we're already in the
11 middle of a hearing. I think that's difficult for
12 any of us, and I'm sure it would be difficult for
13 the other intervenors, as well.

14 HEARING OFFICER VALKOSKY: Understood.
15 Thank you.

16 MS. WILLIS: The other concern I have
17 would be with group 3B, the scheduling of visual
18 alternatives. I'm not sure if Mr. Harris has
19 intended that this order be followed.

20 We would prefer the order to have
21 alternatives at the end because there will be
22 other testimony on transmission system engineering
23 and local system effects that would be part of the
24 alternatives discussion. And I think it would
25 make more sense to just make it clear that that

1 topic had already been explained and explored
2 before we went on to --

3 HEARING OFFICER VALKOSKY: Understood,
4 and I believe the Committee shares your opinion on
5 that. Do you have anything other to add on this,
6 on the scheduling matter?

7 MS. WILLIS: The only other thing was
8 that we don't have a witness available for visual
9 on the 19th or the 22nd, and that was something
10 I'd already expressed earlier.

11 HEARING OFFICER VALKOSKY: All right,
12 okay. Thank you.

13 MR. RATLIFF: Mr. Valkosky, if I could
14 just add, I mean the reservation, at least for the
15 witnesses that I deal with, that I have is for the
16 24th date, for air quality, is that I'm not sure
17 that the District will have its testimony ready by
18 the 24th. They said they thought they could
19 manage by the end of the month, and that was the
20 date that I told them I would try to achieve for
21 them at this conference. No earlier than the end
22 of the month is what I told them.

23 HEARING OFFICER VALKOSKY: Okay, well,
24 obviously if we establish a date of the 9th or so
25 of February that would take care of that concern?

1 MR. RATLIFF: Yes.

2 HEARING OFFICER VALKOSKY: Okay. Mr.
3 Beers, any comments on this?

4 MR. BEERS: I have a few comments.

5 HEARING OFFICER VALKOSKY: Please.

6 MR. BEERS: First of all it would be
7 particularly difficult for us to meet the schedule
8 that's proposed by the applicant. Among other
9 reasons because Mr. Radis, for example, has
10 presented his testimony on hazardous materials,
11 will be testifying on hazardous materials; and
12 then will be preparing and presenting testimony on
13 air quality. And I don't want to telescope all of
14 those tasks into too short a period of time.

15 So to the extent that air quality comes
16 up next, as the first group of the set 3 group,
17 then it would seem to me, at a minimum, February
18 9th. And I would hope let's say another six days
19 beyond that ideally for the presentation of his
20 opening testimony; and for the other presentation
21 of testimony in that set.

22 The second thing I would observe is that
23 the Committee has staggered the filing of
24 testimony in the other groups that it's done
25 before, and I think there's some value to that in

1 terms of the burden imposed on people so that
2 these things can be meted out over time.

3 And so it would make sense to me if
4 we're going to divide group 3 into two
5 subcategories, to set later dates for the filing
6 by the applicant, by the other parties, and
7 rebuttal testimony for the second subcategory
8 under group 3.

9 Finally, I wanted to make sure that it's
10 understood that although I mentioned that CVRP,
11 for example, may or may not file testimony on the
12 visible plume issue, depending on what the
13 applicant says, we definitely are filing testimony
14 on air quality and on the alternatives and local
15 system effects.

16 And that testimony will be influenced by
17 looking at what the applicant has to say. But
18 it's not a matter of that being rebuttal in the
19 sense that's been urged.

20 Finally, it was noted that all of the
21 testimony on the subjects that have been set for 1
22 and 2 have been filed. And I would -- maybe this
23 is not the appropriate time, but I would ask the
24 Committee's permission to file brief written
25 testimony on the noise issue before that matter

1 comes up for testimony. Because CVRP has
2 determined that that may well be an issue which it
3 wants to present some testimony on as a next-door
4 neighbor to this facility.

5 HEARING OFFICER VALKOSKY: We have, at
6 least as far as the noise topic -- thank you for
7 your comments, Mr. Beers -- the noise topic and
8 the filing dates are contained in one of the --

9 MR. BEERS: I understand.

10 HEARING OFFICER VALKOSKY: -- hearing
11 orders.

12 MR. BEERS: I understand.

13 HEARING OFFICER VALKOSKY: Yes.

14 MR. BEERS: And I'm asking for an after-
15 the-fact approval for the filing of some brief
16 testimony on that.

17 MR. HARRIS: We would object.

18 HEARING OFFICER VALKOSKY: Now, why
19 would you object, Mr. Harris?

20 MR. HARRIS: Well, the hearing order
21 provided for a deadline of January 3rd, which we
22 met by our filing on the 29th. The information
23 that has been in the record is in the record. The
24 only thing that has changed is the parties'
25 position relative to the case.

1 And so if the filing deadlines are to
2 mean anything, you know, I think they need to be
3 enforced. I have no showing of anything that
4 would lead me to believe that this is anything
5 other than a strategy change on CVRP's part.

6 And, again, to finish this in a timely
7 manner, we need to move forward and not back, I
8 think, as CVRP is suggesting.

9 HEARING OFFICER VALKOSKY: Don't think
10 we're necessarily moving back by trying to discuss
11 this. But, Mr. Beers, and again I'll have to
12 accept that representation as the filing date. I
13 don't have the order in front of me.

14 Why did CVRP miss the filing date?

15 MR. BEERS: It wasn't a matter of
16 missing the filing date. I think it's a matter of
17 the client realizing that this was a more
18 important issue to it than it had initially
19 anticipated.

20 And in a perfect world we would have
21 been able to foresee that. And I never like to
22 fail to meet deadlines that have been set. And I
23 hate to be in the position of asking the Committee
24 to grant us the right to file testimony later than
25 originally anticipated by the schedule.

1 But as the next-door neighbor we are
2 going to face the brunt of noise impacts, and have
3 specific testimony that we'd like to be able to
4 offer on those issues.

5 MR. HARRIS: Mr. Valkosky, --

6 HEARING OFFICER VALKOSKY: Okay, that
7 raises a concern about applicant being able to
8 adequately prepare cross-examination. So I would
9 suggest, and this is only out for discussion at
10 this time, that one of the things that might
11 happen is that if you were allowed to file that
12 testimony, you may also have to agree to let
13 applicant recall your witness at some future date
14 to cross-examine him on the testimony that was
15 presented.

16 MR. BEERS: Certainly.

17 HEARING OFFICER VALKOSKY: Okay, Mr.
18 Harris.

19 MR. HARRIS: Our testimony on this was
20 filed on December 20th, before Christmas. The due
21 date for CVRP's testimony on this was January 3rd.
22 Here we are January 10th -- 9th.

23 The only offer of proof that we've had
24 is that they've suddenly realized that this is
25 more important than maybe they thought it was.

1 Which, to me, is a strategy issue.

2 And without a further showing of what
3 that realization is based upon, I have to continue
4 to object. Applicant has due process rights here,
5 and I want to see that they're protected. And
6 given the showing thus far, I see nothing that has
7 happened since the passing of the deadline that
8 would lead to this realization.

9 I mean they had more time after the
10 holidays to look at the materials, maybe, I don't
11 know. But that's not a showing to allow the
12 Committee to grant a request --

13 HEARING OFFICER VALKOSKY: Okay, before
14 we get to Mr. Beers and his showing, would you
15 explain to me how your due process rights would be
16 violated?

17 MR. HARRIS: Well, we have the right to
18 move forward in this proceeding. We have these
19 hearings coming up. We've had a hearing order
20 that has been set out, which allows us sufficient
21 time to review the material, file our rebuttal
22 testimony, which we've filed.

23 And this is my point about going
24 backwards in the proceeding. We're hearing people
25 saying they need time to work on the upcoming

1 hearings. This takes us directly backwards at a
2 time when -- and this is the part, I think part of
3 the reason I'm concerned here, is there's talk
4 about a time crunch when the decision was made for
5 nothing to happen in December based upon the
6 request of the other parties.

7 And so now we're hearing, well, they
8 took the time in December, and now there's not
9 enough time in January. Well, that's because the
10 time was taken in December. You know, equity
11 dictates that that be taken into consideration
12 here, as well.

13 HEARING OFFICER VALKOSKY: Okay, now
14 those are scheduling concerns. I'm still going
15 after the due process concern.

16 MR. HARRIS: Procedural due process,
17 substantively there was a set of documents out
18 there. They were allowed to draft their
19 testimony. They elected, at that time, not to do
20 so.

21 We have been expending our resources,
22 considerable resources based upon that election.
23 I can't give you a dollar figure of what it would
24 cost us to do that, as well, but essentially what
25 we're talking about doing is delaying the

1 schedule.

2 And I think we've seen, you know, kind
3 of what's been characterized as a four-corner
4 offense for the last couple days --

5 HEARING OFFICER VALKOSKY: Okay, I'm not
6 sure, Mr. Harris, I disagree. I'm not sure we're
7 talking about delaying the schedule. I mean
8 that's an assumption you have.

9 MR. HARRIS: You're talking about
10 diverting resources away from applicant at a time
11 when these matters were decided based upon an
12 order of this Committee.

13 And if I've offended you by saying due
14 process, I'm not looking at a lawsuit term here.
15 I'm talking about the basic rights of the parties
16 for no unfair surprise. This is a classic unfair
17 surprise in the sense that having completed the
18 portion of this case, we're going to be asked now
19 to go backwards, to our detriment, and to our
20 prejudice. And that's the due process violation.

21 MR. WILLIAMS: Mr. Valkosky, I'd like
22 to --

23 HEARING OFFICER VALKOSKY: Just a
24 minute, Mr. Williams, I'd like to get Mr. Beers'
25 reaction.

1 MR. BEERS: I don't see the due process
2 objection. If it were in my power to go over and
3 apologize to Calpine and to the Committee and to
4 everybody, I'd do so.

5 But it's an important issue. I wish my
6 clients have been able to appreciate the
7 significance --

8 MR. HARRIS: Can you explain the basis?

9 HEARING OFFICER VALKOSKY: I'm sorry,
10 Mr. Harris, let Mr. Beers continue.

11 MR. BEERS: I mean I wish we lived in a
12 perfect world in which people could realize
13 immediately how their interests are most directly
14 affects and could plan everything accordingly, but
15 it doesn't always work that way.

16 And in this instance the client believes
17 that noise may have an impact on it; it may be
18 fairly significant. They'd like an opportunity to
19 present brief testimony on that. They don't want
20 to surprise anybody. They don't want to delay
21 anybody in this proceeding by doing that.

22 And I realize I'm asking for the
23 Committee's indulgence in asking for the
24 opportunity to do that. But it's my intention to
25 ask for that opportunity in concert with every

1 right of cross-examination, with bringing back a
2 witness if that's what's necessary with inserting
3 this into whatever time is available for it.

4 MR. HARRIS: Mr. Valkosky, could I ask
5 that there be some kind of showing for this
6 realization? I mean, --

7 HEARING OFFICER VALKOSKY: When is noise
8 up?

9 MR. HARRIS: Excuse me?

10 HEARING OFFICER VALKOSKY: When is noise
11 set?

12 MR. HARRIS: Next week. We're filing
13 rebuttal testimony tomorrow.

14 MR. WILLIAMS: What, January 17th or is
15 it the 18th?

16 HEARING OFFICER VALKOSKY: We'll go off
17 the record for a second.

18 (Off the record.)

19 HEARING OFFICER VALKOSKY: Mr. Beers,
20 what is the nature of the testimony, specific
21 nature that you would be offering, and how long
22 are you requesting?

23 MR. BEERS: I'd like 30 minutes to
24 present the testimony. The nature of the
25 testimony would be on the noise impacts expected

1 during various operating conditions of the plant,
2 including start-up conditions, for example, on
3 CVRP's facilities that are anticipated at that
4 location. And appropriate mitigation measures
5 that might be suggested for that.

6 It's testimony that we believe could be
7 submitted by the end of this week. And again, be
8 amenable to any way of making sure that applicant
9 and others have an opportunity to respond to that
10 testimony.

11 Given the relationship that Mr. Harris
12 and I have had in this, I'm surprised to hear him
13 suggest that this is part of a four-corner
14 offense, whatever that may mean.

15 MR. HARRIS: Basketball term.

16 HEARING OFFICER VALKOSKY: Okay, the
17 Committee is going to take that under submission.

18 MR. HARRIS: One other factual --

19 HEARING OFFICER VALKOSKY: --
20 approaching a recess.

21 MR. HARRIS: One other factual
22 information I just learned during the break, too,
23 that this witness -- our witness on noise is the
24 witness that is currently out on another
25 assignment. We're flying them back in from Hawaii

1 to be available a week from today to testify on
2 this topic. I don't know when they would have an
3 opportunity to review anything filed by CVRP. And
4 I'm not willing to take the delay.

5 HEARING OFFICER VALKOSKY: Okay, yeah,
6 Mr. Boyd.

7 MR. BOYD: I need to leave, and so I'd
8 like to comment on --

9 HEARING OFFICER VALKOSKY: Okay, all
10 right, I'd like to put this -- just one second,
11 Mike -- put this aside right now. We are finished
12 up on alternatives.

13 MR. WILLIAMS: I have one additional
14 comment on alternatives, sir.

15 HEARING OFFICER VALKOSKY: Mr. Williams.

16 MR. WILLIAMS: Yes. I would appreciate
17 it if you would stipulate that if there is a
18 finding on alternatives that there is a plant site
19 that is acceptable that does not have as many
20 environmental impacts, then that is the first test
21 in the override decision.

22 And at that point these proceedings
23 could stop. In other words, the hearing --

24 HEARING OFFICER VALKOSKY: Well, we're
25 not going to stipulate to that, Mr. Williams.

1 Mr. Boyd, in light of your schedule you
2 had a statement --

3 MR. BOYD: Yes, I just first would note
4 in regards to Mr. Beers' request that your failure
5 to allow his testimony we interpret as another
6 example of precluding meaningful public
7 participation --

8 HEARING OFFICER VALKOSKY: I disagree,
9 because there hasn't been a failure. We took it
10 under submission.

11 MR. BOYD: It hasn't happened yet, but
12 if you do --

13 PRESIDING MEMBER LAURIE: We're not
14 going to argue about it.

15 MR. BOYD: -- just taking --

16 HEARING OFFICER VALKOSKY: Okay --

17 (Parties speaking simultaneously.)

18 HEARING OFFICER VALKOSKY: Mr. Boyd, --

19 MR. BOYD: -- and also --

20 PRESIDING MEMBER LAURIE: Mr. Boyd.

21 MR. BOYD: Yes.

22 PRESIDING MEMBER LAURIE: You have made
23 a continuing objection. We don't have to hear it
24 again. Regardless of what your lawyer says, it's
25 a continuing objection. It's so noted for the

1 record.

2 MR. BOYD: Okay, so I'll just --

3 PRESIDING MEMBER LAURIE: The Committee
4 does not --

5 (Parties speaking simultaneously.)

6 MR. BOYD: -- continue the objection, is
7 that what --

8 PRESIDING MEMBER LAURIE: There's no
9 need to do that.

10 HEARING OFFICER VALKOSKY: Right. It
11 stands.

12 MR. BOYD: Okay, that's fine. Now, what
13 my concern is about the dates being proposed by
14 the applicant, and I'm also a little concerned
15 about staff's date, is what I've heard is that the
16 biological opinion will be out in the end of this
17 month.

18 My understanding is that the PSD air
19 permit being issued by the air district is based
20 on the EPA's buy-off on that biological opinion.

21 So basically we're having hearings on --
22 we're providing written testimony before we've had
23 an opportunity to review these pertinent documents
24 to the upcoming evidentiary hearing.

25 I would request that you provide us

1 sufficient time to review the biological opinion
2 before you have the evidentiary hearing, or any
3 deadlines on the intervenors on the topics of
4 biology, air quality and public health because of
5 that reason.

6 HEARING OFFICER VALKOSKY: Okay, thank
7 you, Mr. Boyd.

8 MR. WILLIAMS: One more comment before
9 you break.

10 HEARING OFFICER VALKOSKY: I'm not
11 breaking yet, Mr. Williams. I'm trying to get the
12 parties' orderly reaction to the scheduling
13 proposals. That's what I'm trying to do. Okay?

14 Mr. Scholz, talking about applicant's
15 proposed filing dates. Do you have any
16 observations you care to offer?

17 MR. SCHOLZ: I was surprised we jumped
18 to this topic of scheduling before we kind of
19 figure out what we were doing on the override
20 testimony. How does that fit into all this?

21 HEARING OFFICER VALKOSKY: These would
22 be matters that would be dealt with prior to
23 override, these hearings.

24 MR. SCHOLZ: So now we're talking that
25 the override hearings are going to happen --

1 HEARING OFFICER VALKOSKY: It's
2 something that would follow this, yes. These
3 filing dates just refer to the six topics that
4 we've talked about.

5 Mr. Williams, wait your turn, I'll get
6 to you.

7 MR. SCHOLZ: I'm trying to understand --
8 I'm thinking from another intervenor's perspective
9 who called me, who is not here right now. You
10 wouldn't discuss any of the policy people that
11 were mentioned earlier --

12 HEARING OFFICER VALKOSKY: No, that is
13 not within the scope of the applicant's proposal.
14 The applicant's proposal deals with what it terms
15 group 3A and 3B, which are designated on the
16 handout and which contain filing dates. That's
17 the only thing I'm trying to ask right now.

18 You've heard staff say they would have
19 difficulty meeting the filing date. You've heard
20 applicant's reasons why it thinks the filing date
21 should be met. I'm just asking you, as a party,
22 for your opinion on those filing dates.

23 MR. SCHOLZ: I think, from a public
24 standpoint, it would be difficult for us to
25 participate in the hearings, you know, going eight

1 to ten hours per day, and also produce all the
2 paperwork that's necessary in roughly the same
3 timeframe. That's just my personal opinion.

4 HEARING OFFICER VALKOSKY: Okay, and
5 that's what I'm looking for, thank you. Ms. Cord.

6 MS. CORD: I have to agree with that. I
7 think that already having seven to eight days,
8 full days of evidentiary hearings during this
9 month, in addition to the fact that we all have
10 outside jobs, and coming up with the filing dates
11 during this same month, during the same timeframe,
12 is unreasonable.

13 HEARING OFFICER VALKOSKY: Okay, thank
14 you. Mr. Williams.

15 MR. WILLIAMS: Thank you, sir. First, I
16 hope that by today the Siting Committee is aware
17 of the testimony of the City of San Jose. In
18 particular, Mr. Shipes. Because this indicates
19 that numerous services that the applicant assumes
20 will not be available.

21 So, first I object to Mr. Harris'
22 schedule. It assumes that the FSA, as it stands,
23 is realistic and adequate. When, in fact, because
24 of the vote of the City Council, many of the
25 assumptions of the FSA are, in fact, incorrect and

1 it's --

2 HEARING OFFICER VALKOSKY: Okay, Mr.
3 Williams, that's something that will be dealt
4 with. I'm looking for your reaction to filing
5 dates.

6 MR. WILLIAMS: Okay, the filing dates
7 are too aggressive because just looking at the
8 first proposal, as I started to say before I was
9 called upon, the hearing dates on the 17th, 18th
10 and 19th preclude preparation in the biology, air
11 quality and public health arenas.

12 Even if we were working on this job full
13 time, we would have only two working days to
14 prepare that testimony.

15 Now, Mr. Harris forcing the schedule by
16 back calculating from an unrealistic operating
17 date should not be used to disadvantage the other
18 parties. He could as easily use an 18-month
19 schedule, which he claims is feasible, and we
20 would have six more months to accomplish --

21 HEARING OFFICER VALKOSKY: Okay, okay,
22 Mr. --

23 MR. HARRIS: That's the four-corner
24 offense right there.

25 HEARING OFFICER VALKOSKY: Don't go

1 there, Mr. Harris. Okay. Mr. Williams, I take it
2 you oppose the proposed dates?

3 MR. WILLIAMS: Yes.

4 HEARING OFFICER VALKOSKY: Okay, thank
5 you. The City of San Jose, I'm sorry, I missed
6 you, Ms. Dent.

7 MS. DENT: That's okay. I think I agree
8 that the dates are a bit aggressive, but I just
9 want to confirm my understanding that staff's
10 proposal is for other parties to file testimony on
11 group 3A on February 9th?

12 HEARING OFFICER VALKOSKY: Well, that's
13 a proposed date --

14 MS. DENT: That's the staff's
15 proposed --

16 HEARING OFFICER VALKOSKY: -- on or
17 about. No, that's actually just a date the
18 Committee came up with in looking this stuff over.
19 That's --

20 MS. DENT: Well, I would find that to be
21 more acceptable, and I do think it would be more
22 consistent with the biological opinion coming out
23 toward the end of --

24 HEARING OFFICER VALKOSKY: Okay.

25 MS. DENT: -- January. And in terms of

1 group 3B, we'd be looking for something similar in
2 terms of extending the date out a bit.

3 And also note that the date that the
4 testimony is due now under the applicant's
5 proposed schedule, is the same date as hearings
6 are scheduled, and I find that to be not
7 acceptable to the City.

8 HEARING OFFICER VALKOSKY: Okay.

9 MS. DENT: It's difficult to do that.
10 And finally, I wanted to just note my support for
11 Mr. Beers' request to be able to late file
12 testimony on noise. I do want to note for the
13 record that the City did not file testimony on
14 noise even though we had indicated that we might.
15 I don't know that any other witnesses filed
16 testimony on noise, so I don't know that there's
17 actually any rebuttal testimony to be filed by the
18 applicant at this point, since we didn't file, and
19 I don't know whether Mr. Williams did.

20 And we will be prepared to participate
21 in the hearings whenever the Commission wants to
22 schedule that matter.

23 HEARING OFFICER VALKOSKY: Okay, thank
24 you. Ms. Cord.

25 MS. CORD: I'm sorry, I forgot what -- I

1 don't have my calendar, but group 3B is proposed
2 for February 20, 21, 22, 23, and I'm trying to
3 understand if anyone knows if that falls under the
4 President Holiday.

5 HEARING OFFICER VALKOSKY: There are
6 holidays around there. I don't know which exact
7 dates they are.

8 MS. CORD: Okay, well --

9 CHAIRMAN KEESE: The 19th, Monday.

10 MS. CORD: In this part of the world we
11 call that ski week, and I would really highly
12 object to having any hearings during --

13 MR. HARRIS: I thought you skied in
14 December --

15 HEARING OFFICER VALKOSKY: Okay, thank
16 you.

17 MR. HARRIS: Can I make a couple
18 observations based on --

19 (Pause.)

20 HEARING OFFICER VALKOSKY: Okay, I'm
21 sorry. Mr. Harris, last bite at the apple before
22 we recess.

23 MR. HARRIS: I'll keep it under a
24 minute. I want to emphasize again --

25 HEARING OFFICER VALKOSKY: Okay, Mr.

1 Williams, please -- go ahead, Mr. Harris.

2 MR. HARRIS: -- there was an election
3 not to do anything in December, and I want to go
4 through and talk about the four upcoming hearings.
5 All the hearings from here forward, 2A, 2B, 3A and
6 3B, if you look at those proposals we have 12
7 topics and 13 full days of hearing. That's more
8 than a day per topic, which to me is completely
9 unprecedented in the Commission's history. But
10 nevertheless, it certainly provides ample time.

11 I also want to note that in our view the
12 Committee has, you know, a fair amount of
13 discretion to establish reasonable procedures for
14 the proceeding to move forward in an orderly
15 fashion. I guess encourage you to use that
16 discretion.

17 HEARING OFFICER VALKOSKY: Okay, thank
18 you. With that we'll recess and reconvene at
19 6:00. Thank you.

20 (Whereupon, at 5:40 p.m., the prehearing
21 conference continuation was adjourned,
22 to reconvene at 6:00 p.m., of this same
23 day.)

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EVENING SESSION

6:00 p.m.

HEARING OFFICER VALKOSKY: By my count we have four items. I will note the presence of the representative of the Rancho Santa Teresa Swim and Racquet Club.

Sir, since you're here the question that we had for you was in the prehearing conference you had indicated that you wanted to present a witness on air quality and public health. Is that still your intention?

DR. WIKTOROWICZ: Yes, absolutely.

HEARING OFFICER VALKOSKY: Okay, if you could identify the witness, provide a --

DR. WIKTOROWICZ: I would ask your accommodation; I'm preparing the name. I'm in consultation with an agency who has not yet given me a name of an individual. But I can assure you there will be a witness, and the proper documents will be filed at the right time according to the schedule.

HEARING OFFICER VALKOSKY: Okay, so this would -- you say this would be a consultant, so I could just indicate as a consultant?

1 DR. WIKTOROWICZ: Yes, that's correct.

2 HEARING OFFICER VALKOSKY: How long
3 would your direct testimony take?

4 DR. WIKTOROWICZ: I would estimate about
5 15 minutes.

6 HEARING OFFICER VALKOSKY: And what
7 would be the nature of that testimony?

8 DR. WIKTOROWICZ: This would address the
9 public health issues, with particular reference to
10 the cooling tower issue and the potential toxics
11 that might be dispersed in the air by that cooling
12 tower.

13 HEARING OFFICER VALKOSKY: Okay, thank
14 you. And for cross-examination you had --

15 DR. WIKTOROWICZ: Yeah, I'd like to
16 reserve, if I could, just a general notion of -- I
17 don't want to formalize any time in terms of
18 cross-examination, but I'd like to reserve the
19 right to cross-examine if the issue came up.

20 HEARING OFFICER VALKOSKY: Okay, so that
21 would be, could I say less than 30 minutes, or --

22 DR. WIKTOROWICZ: I would, yes, I think
23 that's good.

24 HEARING OFFICER VALKOSKY: Okay. At
25 least to my quick inspection you haven't indicated

1 a desire to put a witness on for any of the other
2 topics enumerated; is that still correct?

3 DR. WIKTOROWICZ: Yeah, I've already
4 named and entered into the schedule Professor
5 Watkins for the January 30th on socioeconomics.

6 HEARING OFFICER VALKOSKY: Right. No,
7 I'm really, sir, just talking about the designated
8 the group 3 topics.

9 DR. WIKTOROWICZ: That's the only one.

10 HEARING OFFICER VALKOSKY: Okay. So
11 there's no changes necessary to the group 3 topics
12 in your opinion?

13 DR. WIKTOROWICZ: That's correct.

14 HEARING OFFICER VALKOSKY: Good, thank
15 you. All right, moving right along. As I
16 understand it we've got four items left on this
17 evening's agenda.

18 The first deals with CVRP's request for
19 noise. I would like to briefly discuss the
20 desirability of conducting a separate public
21 hearing solely designed to receive public comment.

22 I'd like to discuss the matter of the
23 override, and our intentions of having a separate
24 hearing for that. And finally, I need an update
25 and clarification on the discovery matters between

1 CVRP and the applicant.

2 Is there anything I've missed to
3 anyone's knowledge? Okay, thank you.

4 Before we get on to the noise, Ms. Dent,
5 I understood the City of San Jose will not, in
6 fact, be putting on a noise witness, was that
7 correct?

8 MS. DENT: That's correct.

9 HEARING OFFICER VALKOSKY: Thank you.
10 Mr. Williams, it had been indicated that you were
11 going to put on a noise witness on January 17th.

12 MR. WILLIAMS: Yes, the press of the
13 Christmas holidays prevented my meeting the filing
14 date.

15 HEARING OFFICER VALKOSKY: Okay.

16 MR. WILLIAMS: So I will have to
17 withdraw that.

18 HEARING OFFICER VALKOSKY: So you will
19 not be putting on a witness. Thank you very much.
20 That assists the Committee.

21 Mr. Beers and Mr. Harris, after
22 considering the request for CVRP's noise witness,
23 the Committee has reached the following
24 conclusions:

25 The Committee would allow you to present

1 your witness at the noise hearing, subject to
2 conditions. The first is that you prefile the
3 testimony by close of business on the 11th, which
4 is this Thursday. And the second is that
5 applicant would then not be expected to file
6 written rebuttal testimony, but would present any
7 rebuttal desired orally at the hearing on the
8 17th.

9 Okay, any questions?

10 MR. BEERS: No questions.

11 HEARING OFFICER VALKOSKY: Any
12 questions, Mr. Harris?

13 MR. HARRIS: Are we precluded from
14 filing written rebuttal testimony if that's in our
15 best interest?

16 HEARING OFFICER VALKOSKY: You are not
17 precluded from doing that. It's just not a
18 requirement.

19 MR. HARRIS: Okay.

20 HEARING OFFICER VALKOSKY: Because you
21 indicated there was some --

22 MR. HARRIS: Can we add rebuttal
23 witnesses?

24 HEARING OFFICER VALKOSKY: Okay, now
25 we're crossing the line. Are you going to prefile

1 for the rebuttal witnesses?

2 MR. HARRIS: See the testimony which I
3 guess we'll get Thursday some time.

4 HEARING OFFICER VALKOSKY: Right. Do
5 you want to reserve the right to prefile?

6 MR. HARRIS: To prefile rebuttal
7 testimony?

8 HEARING OFFICER VALKOSKY: For rebuttal
9 witnesses, as opposed to --

10 MR. HARRIS: We may have to have
11 somebody come out from New York or someone from
12 Hawaii based upon whatever is filed. So, number
13 one, I can't tell you whether it's in our best
14 interests to provide written rebuttal testimony.
15 My gut reaction is it probably is, and we'll be
16 forced to do that despite the fact that we have
17 the option of not doing it.

18 I also need to reserve the right, then,
19 as well, to bring rebuttal witnesses. Again, not
20 knowing what that testimony will look like, I
21 can't tell you whether I will definitely have a
22 rebuttal witness. But if I need to reserve that
23 right, I will.

24 HEARING OFFICER VALKOSKY: Okay. You
25 can reserve that right. I would encourage you to

1 file if you can, written rebuttal testimony.

2 MS. WILLIS: Mr. Valkosky, we had just
3 one comment, a request that CVRP serve
4 electronically their testimony on Thursday. We
5 have our witness, is a consultant, and not in the
6 area. So I'd like to be able to at least try to
7 send that testimony, since there's a holiday on
8 Monday, and it would be difficult to get it there.

9 HEARING OFFICER VALKOSKY: Okay, I
10 assume you can accommodate that request, Mr.
11 Beers?

12 MR. BEERS: Yes.

13 HEARING OFFICER VALKOSKY: Fine. Thank
14 you for reminding me of the holiday, I'd forgotten
15 about that.

16 MR. RATLIFF: One additional matter, Mr.
17 Valkosky. The dates that we've been talking about
18 for rebuttal testimony that are applicable to the
19 applicant, also apply to the staff, is that
20 correct?

21 HEARING OFFICER VALKOSKY: That is
22 correct. All parties filing rebuttal testimony.
23 Excuse me, the filing dates are for all parties.

24 MR. RATLIFF: Okay.

25 MR. HARRIS: Just so I understand our

1 rights here, as well. Is this ruling subject to
2 appeal? And if it is, when would I have to file
3 that?

4 HEARING OFFICER VALKOSKY: Certainly
5 under 1215 of the regulations it's subject to
6 appeal. I'm sorry, Mr. Garbett.

7 MR. GARBETT: Yes, William Garbett.
8 Make an objection here that Coyote Valley is being
9 treated separately. Can you make the availability
10 of this filing date on the 11th for witnesses
11 available to all intervenors and not just Coyote
12 Valley?

13 HEARING OFFICER VALKOSKY: Frankly, Mr.
14 Garbett, I would prefer not to. I believe the
15 Committee has taken this exception on behalf of
16 Coyote Valley since their proposed facility would
17 basically be the next-door neighbor to the power
18 plant.

19 And, frankly, you know, the other
20 parties have withdrawn, the City of San Jose, and
21 Mr. Williams has withdrawn their request for
22 witnesses.

23 Okay, I don't want to open it up any
24 wider than that.

25 Okay, any further matters? All right,

1 as to the public hearing. This would be -- I'm
2 getting a little ahead of myself, but this would
3 be the final event that the Committee would
4 conduct prior to issuing its proposed decision.

5 The purpose of this hearing would be
6 solely to receive public comment. There would not
7 be any witnesses present. It would basically just
8 be an opportunity for those of the public who felt
9 the need to address the Committee concerning the
10 merits of the proposed project, to offer such
11 comment.

12 As I say, at this time it is nothing
13 more than a proposal. I'm interested primarily in
14 getting input from the parties as to whether they
15 think it's a desirable step for the Committee to
16 take or not.

17 Mr. Harris.

18 MR. HARRIS: I want to make sure I'm
19 clear. This is different and separate from an
20 override hearing?

21 HEARING OFFICER VALKOSKY: This is
22 different and separate from an override hearing.

23 MR. HARRIS: And would this only be
24 members of the public commenting?

25 HEARING OFFICER VALKOSKY: Yes.

1 MR. HARRIS: Okay, so this is not the
2 policy discussion?

3 HEARING OFFICER VALKOSKY: This is not
4 the policy discussion, it is separate and distinct
5 from the override hearing, which we'll discuss
6 next. This is solely for the purpose of receiving
7 public comment from those members of the public
8 who wish to come and address the Committee.
9 That's it.

10 MR. HARRIS: What impact would this have
11 on the schedule, I guess is my first question.
12 Would it delay the briefing schedule and the PMPD?

13 HEARING OFFICER VALKOSKY: I can't
14 answer that question with any specificity at this
15 time, except to restate the obvious, that it would
16 take an extra day or portion of the day of the
17 Committee's time.

18 MR. HARRIS: And, again, I want to make
19 sure I'm understanding. This is not a policy
20 witness, like Mr. Therkelsen, he would not be --

21 HEARING OFFICER VALKOSKY: For the --

22 MR. HARRIS: -- strictly members of the
23 public to --

24 HEARING OFFICER VALKOSKY: That is, yes.

25 MR. HARRIS: -- put forth their views of

1 the project?

2 HEARING OFFICER VALKOSKY: That is
3 correct.

4 MR. HARRIS: Okay, applicant's role in
5 this? Would it be a setting similar to this?

6 PRESIDING MEMBER LAURIE: You don't even
7 have to be present if you don't want to. No
8 cross-examination.

9 MR. HARRIS: No cross-examination?

10 HEARING OFFICER VALKOSKY: No.

11 MR. HARRIS: Just basically public
12 comment, okay. I'm sorry. I wanted to make
13 sure --

14 HEARING OFFICER VALKOSKY: Just public
15 comment.

16 MR. HARRIS: To the extent that it has
17 an impact on the schedule that would be of great
18 concern to us. I can't see, personally I don't
19 see, given the numerous opportunities we've had in
20 the past for public input, given the opportunities
21 for people to comment on each of these topics,
22 what purpose that might serve.

23 But, if the Committee wishes to do that,
24 I guess so long as it doesn't affect the schedule
25 adversely, I'm not looking forward to it by any

1 stretch, because you know, I think it's going to
2 be both sides out there whipping up their
3 political supporters, and we're going to have a
4 little bit of a free-for-all. I'd prefer not to
5 have one, I guess, is my bottomline.

6 But, if you can hold me harmless on the
7 schedule, I'll bring my earplugs, I guess.

8 HEARING OFFICER VALKOSKY: Okay, fine.
9 Ms. Willis, any staff opinion? And again, this is
10 only a proposal at this time. I'd like to
11 emphasize that.

12 MS. WILLIS: Staff has held numerous
13 workshops and public workshops, and we have heard
14 the public comments. But I do think there would
15 be benefit for the Committee to be present and
16 hear the public comments that we've been hearing
17 for the last year and a half, as well.

18 I do think this would be beneficial.

19 HEARING OFFICER VALKOSKY: Okay, thank
20 you. Mr. Beers.

21 MR. BEERS: It would be up to the
22 Committee to decide whether it would find that
23 useful for purposes of decision making.

24 HEARING OFFICER VALKOSKY: Thank you.
25 Ms. Dent.

1 MS. DENT: I think in general the City
2 supports public comment and open forums.

3 HEARING OFFICER VALKOSKY: So, I take
4 that that the City would favor such an event by
5 the Committee? Or at least --

6 MS. DENT: We would think that would be
7 an appropriate --

8 HEARING OFFICER VALKOSKY: Would you
9 remain positively neutral, is that --

10 (Laughter.)

11 MS. DENT: We think that would be an
12 appropriate thing for the Committee to do.

13 HEARING OFFICER VALKOSKY: Okay. Thank
14 you. Mr. Scholz.

15 MR. SCHOLZ: I would hope that we
16 wouldn't have to remind the Committee that I
17 believe this was somewhat promised to the public.
18 We actually, as leaders in the community, have
19 discouraged, you know, large blocks of people
20 coming out to all these in order to conduct these
21 meetings, you know, civilized and in a timely
22 manner.

23 So, I think it would be greatly
24 beneficial for the Committee to have one
25 opportunity, not necessarily directed at them, but

1 to hear how the community feels.

2 HEARING OFFICER VALKOSKY: That would be
3 the purpose. Thank you, sir. Ms. Cord.

4 MS. CORD: Yeah, I'd agree. Our group
5 is based on community input almost entirely, and
6 we think that would be the appropriate thing to
7 do. And you're welcome for not bringing out
8 hundreds of people to these evidentiary hearings.
9 But we still can, if you want.

10 HEARING OFFICER VALKOSKY: No, I've been
11 very pleased with the conduct of the parties, and
12 I thank you.

13 DR. WIKTOROWICZ: We also support any
14 opportunity for public participation.

15 HEARING OFFICER VALKOSKY: Mr. Williams.

16 MR. WILLIAMS: Yes, I, too, support the
17 concept and have a question of clarification. The
18 Commission sometimes distinguishes the status of
19 intervenors from the status of members of the
20 public. Would I be allowed to make comments, as a
21 civilian, as an intervenor at that meeting?

22 HEARING OFFICER VALKOSKY: Yes.

23 MR. WILLIAMS: Thank you.

24 HEARING OFFICER VALKOSKY: Mr. Garbett.

25 MR. GARBETT: I think it's very

1 appropriate, and I just hope that it isn't like
2 the first meeting that you held, in an un-air-
3 conditioned gym in the middle of the summer. I
4 hope that we have a better forum for the public to
5 come out into.

6 HEARING OFFICER VALKOSKY: Well, I
7 certainly hope it will be before the middle of
8 summer.

9 (Laughter.)

10 HEARING OFFICER VALKOSKY: Thank you.
11 All right, next the matter of the override hearing
12 that has been talked about today.

13 The Committee's concept of this hearing,
14 and I know we'll toss around the terms witnesses
15 and testimony and things like that, but basically
16 it would be a session, a lawyer could look at it
17 as a session to perform legal argument or, you
18 know, put forth your policy witness. And by
19 policy witness I mean this is a nonevidentiary
20 presentation. It is essentially, would be
21 conceived as an opportunity for the parties to
22 pull together those portions of the evidentiary
23 record if they so desired, or to emphasize other,
24 I use the word policy reasons, which they believe
25 are germane to the Committee's decision. And

1 eventually the Commission, as to whether it should
2 or should not override the determinations of the
3 City of San Jose.

4 I'd like to emphasize that this would be
5 nonevidentiary, so that the people speaking would
6 not be subject to cross-examination.

7 PRESIDING MEMBER LAURIE: And, Stan,
8 this does not take the place of closing briefs,
9 and we will --

10 HEARING OFFICER VALKOSKY: That's
11 correct.

12 PRESIDING MEMBER LAURIE: -- give you
13 proper opportunity to, in writing, make reference
14 to the evidence as you know it.

15 So I think what we're looking for moreso
16 is probably an oral presentation, or I guess
17 written, if you desire, as to what your
18 understanding is of override and what it is that
19 you think we should be looking at.

20 HEARING OFFICER VALKOSKY: Do you have
21 any comments on that, Mr. Harris?

22 MR. HARRIS: Thank you. I think this is
23 a good idea. I think it also fits nicely with the
24 schedule we've proposed in the sense that it's
25 separate from, but related to the briefing

1 schedule we've proposed.

2 So I think that is a nice tie-in to the
3 schedule. And I keep saying the word schedule, --
4 Mike's gone, I won't have to continuing schedule
5 suggestion, but it does fit well with the schedule
6 that we proposed. And I think it fits scheduled
7 with the briefing schedule.

8 The legal arguments, that makes sense to
9 me. And I kind of see it essentially as a final
10 oral argument, if you will. I think the thing I
11 like about this proposal, as opposed to the
12 previous one, is that this would generate light
13 instead of just heat. I think there would be
14 insights developed there.

15 I think it also ties in perfectly with
16 our concept of the override which is essentially
17 that the 25525 provisions related to impacts on
18 the environment, consumer benefits, electrical
19 liability, those are all issues that I think if
20 you look at the table of contents for the final
21 staff assessment, those are the subject matters
22 that are there.

23 And so, we will have created the record
24 when we close the evidentiary hearings on those
25 topics that will form the basis for a discussion

1 of a briefing on the override.

2 So, you know, my suggestion would be
3 that this would be the last, on the last day of
4 hearings. We've proposed four days of hearings
5 for the three, what we're calling 3B issues, and
6 we have three subjects on the first three days;
7 the fourth day could be this particular --

8 HEARING OFFICER VALKOSKY: Without
9 getting to the specific scheduling times, which I
10 don't want to get into, we've had that discussion
11 already, it would be my understanding the
12 Committee's desires that yes, this would follow at
13 some point the conclusion of the evidentiary
14 hearings.

15 MR. HARRIS: That's fine, I --

16 HEARING OFFICER VALKOSKY: And basically
17 be the penultimate event, the last event being the
18 public hearing for public comment that we've
19 talked about.

20 MR. HARRIS: Okay. Again, my
21 understanding, or I guess my desire would be to
22 make sure that it has no impact on the release
23 date for the PMPD and the final decision.

24 So, with that caveat.

25 HEARING OFFICER VALKOSKY: Okay. Would

1 you, and I appreciate that you'd be making
2 argument, would you be calling any policy witness
3 as we've referred to them. Earlier you mentioned
4 someone from the Cal-ISO.

5 MR. HARRIS: I think we would be looking
6 to provide the Committee with as broad a spectrum
7 of policy views on the project, and why we believe
8 it's important for reliability and other issues,
9 so, yes.

10 HEARING OFFICER VALKOSKY: So that would
11 be someone from the Cal-ISO?

12 MR. HARRIS: Perhaps.

13 HEARING OFFICER VALKOSKY: Okay.

14 MR. HARRIS: Perhaps others, as well.

15 MR. HARRIS: Okay. And, again, just for
16 scheduling, a rough idea of how long your
17 presentation would take?

18 PRESIDING MEMBER LAURIE: You're going
19 to hate me for this, but my inclination is to give
20 the parties, because we're not talking about
21 technical witnesses, each give the parties equal
22 time to say whatever it is that they want to say.

23 I would guess that most of the
24 intervenors are not going to take the same time as
25 some, either applicant or staff.

1 But my guess is, if it was up to either
2 of the parties, they would take a long time. And
3 so my suggestion would be to, in an order we'll
4 set the amount of time and figure out who they can
5 provide in that period of time.

6 HEARING OFFICER VALKOSKY: Okay.

7 MR. RATLIFF: Commissioner, is it the
8 Committee's intent to limit this to parties, only?

9 PRESIDING MEMBER LAURIE: Yes.

10 CHAIRMAN KEESE: I'm sorry, limit it to
11 parties only?

12 MR. RATLIFF: Yes.

13 CHAIRMAN KEESE: Okay.

14 MR. RATLIFF: Because we're aware that
15 there seem to be people who are not parties to the
16 proceeding who wish to address the policy issue --

17 PRESIDING MEMBER LAURIE: There may be
18 special folks who, by invitation of the Committee,
19 will be allowed to participate. Members of the
20 general public, who I'm sure --

21 MR. RATLIFF: I understand.

22 PRESIDING MEMBER LAURIE: -- many of
23 them will want to offer comment about override.
24 We're going to save that for the public comment
25 hearing.

1 MR. RATLIFF: Just for example, though,
2 if the Mayor of the City of San Jose, or someone
3 from the Legislature did wish to address that
4 issue, would this be the forum for that
5 particular --

6 PRESIDING MEMBER LAURIE: Yes.

7 HEARING OFFICER VALKOSKY: Yes.

8 MR. RATLIFF: Okay.

9 HEARING OFFICER VALKOSKY: Well, first
10 of all, any further questions, Mr. Harris, or
11 observations?

12 MR. HARRIS: Well, I guess in terms of
13 the time division I think applicant has a
14 different position in this proceeding than anyone
15 else, as being an applicant. I'd note that.

16 In addition, you know, I guess I'm
17 concerned about, you know, the special category of
18 witnesses. For example, where would somebody from
19 like Terry Winters level fit in? Is that Terry
20 Winters, or is that somebody we have to sponsor?
21 I'm not sure how that's all going to work, but we
22 can work with you through those kind of things.

23 HEARING OFFICER VALKOSKY: Well, it
24 wouldn't be so much a question of sponsoring a
25 witness as it would be letting everyone know who's

1 going to show up. And how much time they intend
2 to take.

3 Again, this is nonevidentiary.

4 MR. HARRIS: I understand. The other
5 example is the Mayor of San Jose. I didn't know
6 whether that would be counted as CVRP's time, or a
7 separate category.

8 (Laughter.)

9 MR. HARRIS: You knwo, it sounds
10 facetious, but it's a serious question.

11 CHAIRMAN KEESE: I'll throw something
12 out because we're just, we're mulling it here. It
13 would seem to me that the applicant and the staff
14 get a little bit more time. That each of the
15 intervenors are limited to something like 10 or 15
16 minutes. I don't know what the number is.

17 And that we've heard the Mayor say he
18 was interested. I think some Legislators have
19 indicated they're interested. The Committee will
20 try to accommodate. And if the intervenors or the
21 applicant want to suggest people, then we'll look
22 at what the ISO wants, or -- the Committee would
23 like input on this issue. And this is not meant
24 to quash or squelch input, but we have to handle
25 it in a reasonable fashion.

1 And the intervenors should be allowed to
2 participate in this. The general public, no. If
3 the intervenor wants to delegate to a member of
4 the general public, that's all right. But I don't
5 think that we have to say that the Mayor counts to
6 any particular party's -- unless they choose to
7 yield and say I'll give my 15 minutes to the
8 Mayor.

9 Anyway, that's my thinking at this time,
10 and the Committee will mull this.

11 HEARING OFFICER VALKOSKY: Again, there
12 has been no determination made. We're looking for
13 the best way to structure this potential event,
14 that's all.

15 I'm sorry, Mr. Ratliff, did you have any
16 other suggestions?

17 MS. WILLIS: I had a couple of
18 questions.

19 HEARING OFFICER VALKOSKY: Ms. Willis,
20 sure.

21 MS. WILLIS: The first is would we have
22 already written our briefs on the technical topics
23 before this hearing, or would your briefs follow?

24 HEARING OFFICER VALKOSKY: Your briefs
25 would follow, at least in -- I realize we're

1 developing the concept, but I think the briefs
2 would follow --

3 MS. WILLIS: Okay.

4 HEARING OFFICER VALKOSKY: --
5 necessarily.

6 MS. WILLIS: And the other question I
7 had would be, although you said no cross-
8 examination, would our witnesses then be -- would
9 still be open to questions like clarification or
10 other types of questions?

11 PRESIDING MEMBER LAURIE: That may be
12 very limited, Ms. Willis, because you start doing
13 that and you lose control very quickly.

14 So I am anticipating no. If somebody
15 wants to volunteer something, that's fine. But
16 everybody's going to get their shot.

17 MS. WILLIS: At this time the only
18 witness that we've identified is Robert
19 Therkelsen.

20 HEARING OFFICER VALKOSKY: Okay, in your
21 prehearing conference statement I believe you had
22 listed TURN.

23 MS. WILLIS: We had suggested that the
24 Committee might be interested in hearing from
25 those organizations. We hadn't planned on

1 sponsoring them at this time. But, at the
2 Committee's request we can contact them and see.
3 Or the Committee may be interested in contacting
4 them, themselves.

5 HEARING OFFICER VALKOSKY: Okay, thank
6 you.

7 MS. WILLIS: We don't anticipate more
8 than about 30 minutes.

9 HEARING OFFICER VALKOSKY: Thank you.
10 Mr. Beers.

11 MR. BEERS: I think this is a
12 tremendously important hearing that the Committee
13 has said, and with the idea that the Committee's
14 desire is to get the maximum amount of input on
15 this important issue that it can, the one thing I
16 want to make sure of is that different individuals
17 and interests in this who have a very developed
18 sense of what this Committee must do in order to
19 be able to approve this power plant, have a full
20 opportunity to make their presentation.

21 And I say that only because -- and I
22 mean no disrespect either to the applicant or to
23 staff on this, but it's my sense that the
24 variation between applicant and staff's
25 presentation on the issue of override will be far

1 less significant than the variation that may exist
2 between what CVRP would have to say, or the City
3 of San Jose would have to say on the issue of
4 override, and staff and the applicant taken
5 together.

6 So that's only by way of saying that I
7 think CVRP, for example, I know would like to be
8 able to participate fully and have a good
9 allotment of time in order to be able to present a
10 well developed presentation on that.

11 HEARING OFFICER VALKOSKY: Okay, can you
12 bracket good allotment of time?

13 MR. BEERS: Forty-five minutes, as an
14 argument presentation by a lawyer, let's say. And
15 I don't know whether there are individuals outside
16 of CVRP that we would want to sponsor in the same
17 sense that people are talking about TURN or the
18 ISO. But if there were additional time, then
19 there might be some other people that we would
20 call in that respect.

21 HEARING OFFICER VALKOSKY: Okay.
22 Understood. Thank you.

23 Just a second, Mr. Williams, we'll get
24 there. Ms. Dent, the City's views on this?

25 MS. DENT: Well, I want to make sure

1 first of all that I understand on behalf of the
2 City what we're talking about in terms of the
3 override hearing. And as I understand it, from
4 the discussion, it would be for the purpose of
5 pulling together evidence that's already in the
6 record, and making argument based on the evidence.
7 And I want to make sure that I understand that
8 this is not going to be an opportunity for
9 evidence to come in that is not subject to cross-
10 examination.

11 HEARING OFFICER VALKOSKY: That is
12 correct.

13 CHAIRMAN KEESE: And you've made that
14 point better than we could have.

15 MS. DENT: Then with that understanding,
16 and obviously our Mayor has indicated some
17 interest in testifying, and I think that this
18 would probably be an appropriate time and place
19 for the testimony, although he may want to testify
20 as a witness. I still don't know.

21 He's down as a witness to testify on
22 land use. And if he does testify on land use, it
23 will be in the course of the normal proceedings.

24 But I would say that for the City the
25 override issue is only one of a number of legal

1 issues. So I do want to make that clear for the
2 record, as well. This, to us, is a very limited
3 legal issue, and so to the extent that you do want
4 to hold a separate hearing on the override issue,
5 and separate briefing, if that's the case, on the
6 override issue, that's fine.

7 But it is only one of a number of legal
8 issues that we think we have vis-a-vis the
9 Commission.

10 And probably 45 minutes to an hour with
11 the Mayor spending whatever amount of time he
12 wants to spend. And then with some time for legal
13 argument if we feel like that is necessary, and
14 would explain our position.

15 HEARING OFFICER VALKOSKY: Okay, I'd
16 also like to emphasize that this would not curtail
17 the briefing period and everything which will be
18 provided. So this is again, just really kind of a
19 separate session.

20 MS. DENT: I understand that.

21 HEARING OFFICER VALKOSKY: Okay, great.

22 MS. DENT: From the comments of your
23 staff counsel, that there would be briefing later.

24 HEARING OFFICER VALKOSKY: Okay, thank
25 you. Mr. Scholz.

1 MR. SCHOLZ: This is very important to
2 me, but I imagine it's going to be handled most
3 likely by the attorneys. So, I don't -- you know,
4 10 or 15 minutes should be sufficient for me.

5 HEARING OFFICER VALKOSKY: Okay. Ms.
6 Cord.

7 MS. CORD: What the attorney for San
8 Jose just stated about no new information coming
9 forward, just summarizing what's already in the
10 evidentiary hearing record, is that correct?

11 HEARING OFFICER VALKOSKY: There is --

12 MS. CORD: Did I hear --

13 HEARING OFFICER VALKOSKY: I can't say
14 there's no new information. There's no new sworn
15 testimony coming forward.

16 MS. CORD: Okay.

17 HEARING OFFICER VALKOSKY: You'll be
18 getting, I would imagine you'd be getting policy
19 witnesses presenting their reason --

20 MS. CORD: Okay.

21 HEARING OFFICER VALKOSKY: -- that we
22 believe that a party -- excuse me, that a party
23 believes or does not believe the Committee should
24 override the City of San Jose.

25 MS. CORD: Okay.

1 HEARING OFFICER VALKOSKY: But, again,
2 there's not going to be any factual determinations
3 made. This will essentially be arguments, these
4 statements, if you will.

5 MS. CORD: Well, I guess the concern I
6 have is that there are interested parties that
7 don't appear to be in evidence, and therefore
8 probably won't have anything in the evidentiary
9 hearing record.

10 Mr. Abreu told us that approximately
11 two-thirds of the facility site is in the County,
12 but I don't see anyone from the County
13 represented. Yet I would think they would have an
14 opinion about an issue over which they have --

15 HEARING OFFICER VALKOSKY: I can only
16 assume the County is aware of these proceedings,
17 and has chosen to participate at the level they've
18 had. I mean, that's their --

19 MS. CORD: Well, I think it's fairly new
20 information that the project site will not be in
21 the City. I mean the rest of us have been at this
22 for two years. I think the County didn't know
23 until recently.

24 HEARING OFFICER VALKOSKY: I can't
25 respond to what the County knows or doesn't know.

1 MS. CORD: Well, I don't think anyone
2 could have known before the City vote.

3 HEARING OFFICER VALKOSKY: Okay, so --

4 MS. CORD: Well, I guess I'm just saying
5 that undoubtedly they're an example of a party
6 that will undoubtedly be interested, whether they
7 choose to speak or not, I don't know.

8 HEARING OFFICER VALKOSKY: Okay. And as
9 Commissioner Laurie said, that may be something
10 that -- an eventuality that the Committee will
11 retain the flexibility to accommodate.

12 What I'm interested in now is your group
13 going to participate in this, and if so, --

14 MS. CORD: Yeah, we certainly want to
15 comment, and again, a brief time would be
16 appropriate, maybe 10, 15 minutes.

17 HEARING OFFICER VALKOSKY: Thank you.

18 DR. WIKTOROWICZ: I'd also like to
19 reserve the ten-minute slot for comments that
20 might develop.

21 HEARING OFFICER VALKOSKY: Thank you.

22 MR. WILLIAMS: Mr. Williams. First a
23 constructive suggestion, if I may. I think the
24 call for the meeting, the announcement of the
25 meeting should be accompanied by one or two

1 background papers.

2 In the two-paper format, one would be a
3 legal brief arguing in some detail the basis under
4 which you believe the CEC has override authority.

5 The second paper would be another legal
6 brief arguing the case for why the CEC does not
7 have override authority.

8 I think it's an open question, in my own
9 opinion, because of the deregulation and the
10 privatization whether or not the CEC does have
11 override authority in this matter.

12 So I think that needs to be one of the
13 topics that's on the table, as well as then a
14 second --

15 HEARING OFFICER VALKOSKY: That's
16 certainly a comment you're free to address at this
17 hearing.

18 MR. WILLIAMS: Well, I would like to
19 persuade you to supply those legal briefs, because
20 then the comment of each of the parties can
21 address their opinion as to whether or not the
22 authority exists without new legislation by the
23 Governor or by the Legislature.

24 HEARING OFFICER VALKOSKY: Okay, the
25 Committee will take that suggestion under

1 submission.

2 MR. WILLIAMS: Okay. Secondly, I would
3 like to participate in a major way. This is the
4 type of policy research that I have spent a good
5 part of my career doing, and so I would probably
6 provide detailed comments that might take as long
7 as 45 minutes.

8 HEARING OFFICER VALKOSKY: Okay, thank
9 you. Mr. Garbett.

10 MR. GARBETT: I find a dangerous
11 precedent on the Committee stating there will be
12 an override to start off with. But let's assume
13 you're neutral on the issue at this point in time.

14 I see the Warren Alquist as one part of
15 an override. And then I also see CEQA as another
16 overriding consideration. The question is, is
17 there a CEQA equivalent process with the Energy
18 Commission, because the legislative intent of CEQA
19 was a public participation process, where this is
20 an intervenor or you might say an evidentiary or
21 legal procedure --

22 HEARING OFFICER VALKOSKY: Okay, Mr.
23 Garbett, how does this relate -- I'm familiar with
24 these arguments, but that's not what we're dealing
25 with --

1 MR. GARBETT: But in any case, I think
2 it is a worthwhile opinion that you are allowing
3 this to proceed. I think, though, what you should
4 do is just give a block of time of a half hour to
5 each intervenor where they may pass the baton
6 earlier or later, and people may accumulate or
7 subtract their time by their own consent.

8 HEARING OFFICER VALKOSKY: Okay, thank
9 you, that will be another consideration the
10 Committee will take --

11 MR. WILLIAMS: Could I make one more --

12 HEARING OFFICER VALKOSKY: Okay, last
13 one, Mr. Williams.

14 MR. WILLIAMS: Yes. It's been fairly
15 widely circulated, and I believe publicly
16 circulated, a legal opinion of Counsel Blees of
17 the CEC Staff, with respect to override.

18 And in asking for a briefing paper I
19 believe something more complete than that
20 particular briefing paper is appropriate, because
21 it does not address many of the major issues that
22 at least arguably now prevent override at this
23 time.

24 CHAIRMAN KEESE: I'll just venture here
25 that the question is not do we have the authority

1 to override, because if we didn't we wouldn't be
2 here. If we felt we didn't.

3 The question is based on what we've
4 heard should we recommend override or shouldn't
5 we. That will be the discussion.

6 I guess if you want to spend your time
7 arguing whether we have the authority, that will
8 be a way to spend your time. But, if I didn't
9 feel that we did have the authority to override, I
10 would not be spending my time in San Jose.

11 MR. WILLIAMS: Well, I appreciate that
12 comment. Just one more follow up. Part of my
13 reason for saying that was in the comments to
14 Senator Pease's AB-110 or SB-110 last year, the
15 Commission held hearings in which I met
16 Commissioner Laurie for the first time. And one
17 of the issues was whether to go to the Legislature
18 for override authority.

19 Maybe Commissioner Laurie can refresh my
20 memory as to the outcome of that.

21 PRESIDING MEMBER LAURIE: I'm not going
22 to discuss or comment on any of that.

23 MR. WILLIAMS: Okay.

24 HEARING OFFICER VALKOSKY: I think, Mr.
25 Williams, the guidance you need is contained in

1 the statute in 25 or 35 --

2 PRESIDING MEMBER LAURIE: That was
3 amended by 110.

4 HEARING OFFICER VALKOSKY: Right, and I
5 mean I think that's what we're looking at. It is
6 what it is.

7 Anything further on this?

8 Okay, thank you. The last matter
9 concerns an update on the status of the discovery
10 matters between applicant and CVRP.

11 Mr. Harris.

12 MR. HARRIS: Okay, we had two
13 outstanding data requests that we dealt with the
14 last time the Committee met. I think it was on
15 the 3rd.

16 CVRP's 1D1 and '2, related to the source
17 test firm and whether there was some additional
18 information there about aborted tests. We were
19 requested and agreed to go back to the source test
20 firm, ask them whether they had any additional
21 information about those aborted tests, and whether
22 they would provide that.

23 Their policy was not to provide that
24 information without express written authorization
25 of Calpine -- Calpine/Bechtel in this case.

1 Calpine/Bechtel provided that authorization.

2 And so the first document I have
3 tonight, in satisfaction of Mr. Beers' request is
4 the information from the source test firm. It
5 comes in the form of a fax cover sheet from Gary
6 Rubenstein. It has about a one and a quarter page
7 description of the facts by Mr. Rubenstein. And
8 then the attached documents that were received
9 from the source test firm.

10 The source test firm has represented to
11 us that that is everything that they have. And so
12 not only the CVRP, with this, have every document
13 we have in our possession; we've gone out and
14 gotten others, really against the objection of the
15 source test firm. And we're providing those
16 without filter.

17 And I'll make a copy of that available.

18 HEARING OFFICER VALKOSKY: Okay, and
19 that's responsive to 1D1 and 1D2, or just 1D1?

20 MR. HARRIS: 1D1 and 1D2.

21 HEARING OFFICER VALKOSKY: Okay.

22 MR. HARRIS: The other outstanding issue
23 related --

24 HEARING OFFICER VALKOSKY: You will
25 provide that to Mr. Beers?

1 MR. HARRIS: I'll give it to him
2 tonight, and we'll file and serve it on the rest
3 of the service list this week.

4 HEARING OFFICER VALKOSKY: Thank you.

5 MR. HARRIS: In response to data request
6 4A, the turbine issue. We conclusively
7 established on the 3rd that there are no vendor
8 guarantees.

9 We were able to go and find the
10 preliminary information that Mr. Beers alluded to
11 in I think attachment 4 to CVRP's original motion.

12 Subsequent to that I received a letter
13 from Mr. Beers saying, well, not only do I want
14 what was in exhibit tab 4, I want what was in tab
15 10. So let me address both of those.

16 Tab 4, I have that information. I'll be
17 providing that tonight to Mr. Beers, and we'll be
18 filing and serving that.

19 As to tab 10, I've been told that I can
20 say unequivocally that we have no such similar
21 information as to tab 10. So, again, from our
22 perspective, this is everything that is within our
23 possession and responsive to the data requests.
24 And in my view goes beyond the original data
25 requests, but we're willing to satisfy the

1 Committee in that regard.

2 HEARING OFFICER VALKOSKY: Okay, Mr.
3 Beers.

4 MR. BEERS: I appreciate Mr. Harris'
5 efforts. Hopefully we've got the data that we
6 sought. And I'll take a look at what he's
7 provided. And if there are any problems with it,
8 or deficiencies in it, I would hope that I could
9 come back to the Committee for that.

10 But I'm obviously disabled from being
11 able to --

12 HEARING OFFICER VALKOSKY: No, I
13 understand --

14 MR. BEERS: -- report on this response.

15 HEARING OFFICER VALKOSKY: -- that you
16 haven't seen it. Keep in mind, however, that at
17 least my reading of the regulations, requires a
18 response. It does not require any subjective
19 satisfaction on the part of the party receiving
20 the information.

21 MR. BEERS: I understand that, but we're
22 in a situation in which the Committee never
23 officially entered an order that required a
24 particular response. It's been done informally,
25 which I think was an appropriate way to do it.

1 But what that means is that I need to take a look
2 at his materials and assuming they're as he
3 describes them, it sounds like --

4 HEARING OFFICER VALKOSKY: Certainly you
5 have to take a look at his materials. When could
6 we look forward to a future communication from you
7 so we can determine whether or not we've closed
8 this loop?

9 MR. HARRIS: After your filing on
10 Thursday?

11 MR. BEERS: After the filing on
12 Thursday. Within a week from today if that's
13 sufficient.

14 HEARING OFFICER VALKOSKY: Yes, so that
15 will be the 16th?

16 MR. HARRIS: Mr. Valkosky, I think,
17 assuming that we are where I hope we are, that
18 we've satisfied CVRP in these last two outstanding
19 data requests, I think I would actually want no
20 loose ends here. Meaning that I'd like to have an
21 affirmation in writing from CVRP to the Committee
22 or to whoever, saying that if indeed this
23 satisfies their request, that the requests are
24 satisfied and they've withdrawn their petition.

25 I want the administrative remedies issue

1 off the table, I think is what I'm looking for, in
2 writing from CVRP, if, in fact, that's the case.

3 And I would also, just on the other
4 issue of vacating the previous order, I would not
5 have a problem, as we indicated in our previous
6 filing, of having that order vacated as being moot
7 based upon the complete withdrawal of that request
8 by CVRP.

9 HEARING OFFICER VALKOSKY: That's
10 certainly an action the Committee would consider
11 taking.

12 Mr. Beers, any problems with --

13 MR. BEERS: That sounds like the
14 appropriate procedure, and I'm prepared to look
15 over the material, write a letter indicating that
16 it satisfies the outstanding data requests.

17 HEARING OFFICER VALKOSKY: Good.

18 MR. BEERS: The rest are moot assuming
19 that my review indicates that.

20 HEARING OFFICER VALKOSKY: Good, looking
21 forward to --

22 MR. BEERS: And I would also urge that
23 the Committee vacate its prior ruling --

24 HEARING OFFICER VALKOSKY: And as I say,
25 that's certainly something the Committee would

1 actually consider if the reason for the ruling
2 goes away essentially.

3 All right. That concludes the items of
4 business as I have them. Is there anyone that
5 desires to offer any public comment on the matters
6 that we have just discussed?

7 MR. BEERS: Can I raise one question
8 with respect to the testimony scheduled on
9 hazardous materials? And I raised this issue with
10 Mr. Harris earlier, and that is our witness has
11 indicated that it may be useful to have some
12 visual aids. And we would prefile those.

13 I don't think anybody is suggesting
14 making up anything that would be in the form of
15 new testimony, but really, you know, a site map
16 that would orient the testimony to the facility
17 and its neighbors and the routes that the proposed
18 ammonia transport would take, for example. And
19 alternative routes.

20 And I've suggested to Mr. Harris that
21 we'd be happy to trade those back and forth with
22 him, as well as with staff in advance of the
23 hearing to make sure that nobody's subject to any
24 surprises. And I wanted to make sure that was an
25 acceptable procedure.

1 HEARING OFFICER VALKOSKY: Mr. Beers,
2 let me understand. These visuals wouldn't contain
3 any new information, but would essentially be just
4 graphically depicting existing --

5 MR. BEERS: It's my understanding that
6 they would graphically depict the proposed routes
7 and the alternative routes that have been
8 suggested in the testimony.

9 HEARING OFFICER VALKOSKY: Okay.

10 MR. BEERS: And not be new testimony in
11 the sense of proposing anything new.

12 HEARING OFFICER VALKOSKY: Right. Is
13 that your understanding, Mr. Harris?

14 MR. HARRIS: Actually, I'm not sure it
15 is. We talked about various documents, and I said
16 to the extent something's already an exhibit, and
17 in the AFC or whatever, you know, then that's
18 fine.

19 My recommendations to our consultants
20 will be to the extent that something is a new
21 issue, and the one that comes to mind are like new
22 photo simulations, it's a picture, but it's also a
23 document, I'm going to ask our folks to make every
24 reasonable effort to prefile those.

25 So if Mr. Beers is talking about new

1 maps, proposing routes for ammonia trucks, I
2 definitely want that in the prefiled testimony so
3 I can take a look at it and have my experts in
4 traffic and transportation --

5 HEARING OFFICER VALKOSKY: But, Mr.
6 Beers, I understood that's not what you were
7 talking about?

8 MR. BEERS: It's not my understanding
9 that that's what the consultant wants.

10 HEARING OFFICER VALKOSKY: Right.

11 MR. BEERS: It's really just to be able
12 to graphically illustrate what's in the testimony
13 already. And the site, and to the extent that
14 there are items that are already in the record
15 that can be blown up and serve that purpose, fine.

16 But I'm raising this issue because the
17 graphic depiction of what his testimony deals
18 with, or what the applicant's testimony deals with
19 may not, per se, be in the record as it stands
20 right now. And that's why we would circulate that
21 to you in advance so that there would be no
22 problem with it at the hearing.

23 HEARING OFFICER VALKOSKY: Well, I
24 think, circulate it in advance, I think is the
25 appropriate thing to do on it.

1 MR. HARRIS: Well, my understanding is
2 that's the purpose of prefiling. That is the
3 circulation in advance. And so if there's going
4 to be photo simulations or other documents that
5 are going to be used by CVRP to support their
6 case, which are not currently in the record or
7 available to me, I want to be able to see them as
8 part of their prefiled testimony.

9 PRESIDING MEMBER LAURIE: Well, I would
10 suggest that you maintain a right of objection.
11 And if there is new information in there that you
12 haven't had an opportunity to respond to, you can
13 object to it being presented.

14 MR. HARRIS: That gives me a remedy on
15 the spot, but I won't know that until I get to the
16 hearing. What I'm worried about, at the most
17 fundamental level, is unfair surprise. And having
18 to sit here with my consultant and say, have you
19 seen this, do you know what this is, does it make
20 sense to you.

21 That's what I'm trying to avoid, and I'm
22 afraid that to the extent they bring any new
23 testimony or information, maps, what-have-you,
24 that creates a potential for unfair surprise.

25 PRESIDING MEMBER LAURIE: Why can't the

1 applicant be presented, as part of the prefiling?

2 MR. BEERS: Well, I think we're talking
3 about testimony that's already been filed. And so
4 what I'm saying is that to the extent that
5 graphical representations --

6 MR. HARRIS: So where are we now? We're
7 not --

8 MR. BEERS: -- would be useful --

9 MR. HARRIS: This is not noise, I take
10 it.

11 MR. BEERS: No, it's hazardous
12 materials.

13 MR. HARRIS: So this is other testimony
14 that's already been filed that you'd like to
15 supplement?

16 MR. BEERS: I don't want to supplement
17 it. I want to, to the extent that it would be
18 useful to have a diagram, for example, of the
19 facility location and relationship to the highways
20 and so forth, that may already be in the record,
21 in which case we can have it blown up.

22 If there's not an adequate example of
23 that in the record, but it comes, derives from the
24 testimony and you're not presenting anything new,
25 then we'll present it in a graphic format and show

1 it to you in advance.

2 And I think Commissioner Laurie is
3 absolutely right, that if we're guilty of unfair
4 surprise then there's a good objection to that.
5 And my objective in saying that we'd show that to
6 you in advance is to make sure there wasn't any
7 unfair surprise.

8 CHAIRMAN KEESE: And I would think you'd
9 reference where you found it in the record?

10 MR. BEERS: Absolutely.

11 MR. HARRIS: If it's in the record
12 already then there wouldn't be unfair surprise.
13 If it's brand new material, we've already had the
14 filing deadline pass for the hazardous material
15 section --

16 CHAIRMAN KEESE: I think he's going to
17 give you the reference where it is in the record.

18 HEARING OFFICER VALKOSKY: Right, and --

19 CHAIRMAN KEESE: When he gives it to
20 you.

21 HEARING OFFICER VALKOSKY: -- it is
22 certainly my understanding from Mr. Beers'
23 representation that this is just a graphic
24 representation of existing material in the record,
25 is that correct, sir?

1 MR. BEERS: Correct.

2 MR. HARRIS: Will he move it into
3 evidence? Is he intending to have it marked as an
4 exhibit and put into the evidentiary record?

5 MR. BEERS: I don't know the answer to
6 that and --

7 MR. HARRIS: I think that's --

8 MR. BEERS: -- it seems to me that's --
9 we'll decide on that on the day of the hearing. I
10 think that's far less important than just --

11 MR. HARRIS: That's the essence of --

12 MR. BEERS: -- the Committee being able
13 to have a useful representation.

14 MR. HARRIS: To me that's a very
15 substantive difference. If you're going to use
16 something just to kind of help orient people,
17 that's one thing. If you want to have it marked
18 as an evidence, exhibit introduced into evidence,
19 then that ought to be prefiled.

20 I think, you know, I'm trying to help
21 create a distinction here, but you know, if we
22 were talking about a phase three issue here,
23 that'd be different. We've already filed
24 testimony on these topics.

25 HEARING OFFICER VALKOSKY: All right,

1 but I think we're talking about your former
2 example of something to just help orient people
3 and lead them through. That's my understanding of
4 it, okay?

5 MR. HARRIS: It will not be introduced
6 into evidence?

7 HEARING OFFICER VALKOSKY: Wouldn't see
8 why it would need to be.

9 MR. HARRIS: Okay, so long as it's not
10 introduced into evidence. If it's strictly a map
11 or something showing the site that's somewhere
12 else, that's a lesser concern. I'll reserve my
13 right to make my objection about unfair surprise.

14 But if we're talking about documents
15 that he wants to identify, move into the
16 administrative record, that ought to be prefiled.

17 MR. BEERS: I guess the only thing I'd
18 say is I want to make sure that in building a
19 record we're building a complete record. And if
20 this thing goes on beyond the Commission I don't
21 want there to be things missing from the record
22 that --

23 PRESIDING MEMBER LAURIE: Well, then
24 that's what you consider when you prefile, sir.

25 MR. BEERS: So I'm willing to observe

1 the distinction that this is useful for orienting
2 the Committee in viewing the testimony.

3 HEARING OFFICER VALKOSKY: Okay, fine.
4 Ms. Wong.

5 MS. WONG: I did not hear decision on
6 the filing date of the testimony for the 3A and
7 3B --

8 HEARING OFFICER VALKOSKY: There has not
9 been a decision. We've had a discussion. The
10 Committee will take that discussion under
11 submission and issue a separate notice and order
12 or orders.

13 MS. WONG: So it's not decided yet?

14 HEARING OFFICER VALKOSKY: That's
15 correct.

16 MS. WONG: Okay, thank you.

17 MR. BEERS: Earlier I'd indicated that I
18 had not given dates upon which witnesses would not
19 be available. Would that be something useful to
20 provide at this time?

21 HEARING OFFICER VALKOSKY: That would
22 certainly be a factor, yes.

23 MR. BEERS: Okay.

24 HEARING OFFICER VALKOSKY: Quickly.

25 MR. BEERS: Absolutely.

1 HEARING OFFICER VALKOSKY: Yes, Mr.

2 Beers, I can do that off the record.

3 MR. BEERS: Okay.

4 HEARING OFFICER VALKOSKY: Okay.

5 PRESIDING MEMBER LAURIE: Let's go ahead
6 and adjourn.

7 HEARING OFFICER VALKOSKY: Okay, is
8 there any other public comment on the matters
9 discussed today?

10 Thank you for your attendance and
11 participation. We're adjourned. See you next
12 week.

13 (Whereupon, at 7:00 p.m., the hearing/
14 continued prehearing conference was
15 adjourned.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing and Continued Prehearing Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing and continued prehearing conference, nor in any way interested in outcome of said hearing and continued prehearing conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of January, 2001.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

